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Presidential Documents

Title 3—

The President

Presidential Determination No. 03–07 of December 11, 2002

Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

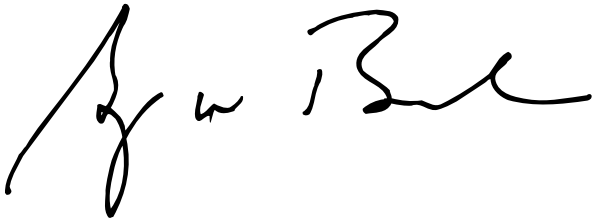
Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading ''Policy toward Burma'' in section 570(d) of the Fiscal Year 1997 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

(1) progress toward democratization in Burma;
(2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourism industry, and environmental quality; and
(3) progress made in developing a comprehensive, multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Peace and Development Council and democratic opposition groups in Burma.

I understand the attached report was not forwarded due to an administrative error.

You are hereby authorized and directed now to transmit the attached report fulfilling the above-stated requirements to the appropriate committees of the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 11, 2002.

Billing code 4710–10–M

Conditions in Burma and U.S. Policy Toward Burma for the Period September 28, 2001–March 27, 2002

Introduction and Summary

Over the past 6 months, Burma's military government and the National League for Democracy (NLD) General Secretary Aung San Suu Kyi have continued confidence-building measures that are reportedly aimed at supporting a transition to democracy and civilian rule. Both sides have held the substance of these talks in strictest confidence, but the past 18 months has seen the release of approximately 250 political prisoners, and a halt to the vicious attacks on Aung San Suu Kyi and the NLD by the government-owned press. Unfortunately, the process has moved very slowly. Of particular concern is the continuing house arrest of Aung San Suu Kyi.

The quality of life in Burma during the past 6 months has deteriorated. Poverty is widespread, and the economy increasingly shows the effects of a growing government deficit, rising inflation, shortfalls in energy supplies and growing foreign exchange shortages. Severe human rights abuses are commonplace, particularly in ethnic minority areas, where there are continuing reports of extrajudicial killings, rape, and disappearances. Due to continuing severe restrictions on religious freedom, Burma was again designated a ''country of particular concern'' in 2001 under the International Religious Freedom Act. Prison conditions are harsh, despite access to the prisons by the International Committee of the Red Cross. One retired university rector was also detained and sentenced to 7 years in prison following his one-man protest calling for new general elections.

Forced labor remains an issue of serious concern. In September 2001, an ILO High Level Team visited Burma to assess the situation and concluded that the SPDC had made an ''obvious, but uneven'' effort to curb the practice; nevertheless, forced labor persisted, particularly in border areas. In March 2002, the government reached agreement with the ILO on appointment of an ILO liaison officer in Burma, pending establishment of a permanent ILO office.

Burma is also one of the world's largest producers of illicit opium, heroin, and methamphetamines. However, its overall output of opium has declined by two-thirds over the past 5 years, in part as a result of bad weather and in part as a result of eradication efforts. It has also stepped up law enforcement operations against some former insurgent groups (particularly the Kokang Chinese) and considerably improved its counter-narcotics cooperation with China, Thailand, and other neighboring states.

United States policy goals in Burma include progress towards democracy, improved human rights, a more effective counternarcotics effort, counterterrorist cooperation, resolving MIA cases from WW II, and addressing the HIV/AIDS epidemic which threatens regional stability and prosperity. We hope that the on-going talks between Aung San Suu Kyi and the military will lead to meaningful democratic change and national reconciliation. We consult regularly, at senior levels, with countries interested in Burma that share our goals.

In coordination with the European Union and other states, the United States maintains sanctions on Burma aimed at encouraging transition to democratic rule and greater respect for human rights. These include an arms embargo, an investment ban, and other measures.

Measuring Progress toward Democratization

From September 2001 through March 2002, Burma's military regime continued talks with the NLD's General Secretary, Aung San Suu Kyi. Since the talks began 18 months ago, we have seen the release of approximately 250 political prisoners, including all but 20 of the MPs elected in 1990

and all of the NLD's Central Executive Committee members with the exception of Aung San Suu Kyi. The regime has also halted the virulent attacks on Aung San Suu Kyi and the NLD which had become a staple of newspaper coverage in Burma. In addition, the military government has allowed the NLD to reopen 32 party offices in Rangoon Division and to resume some normal party activities. These included public meetings on Burma's National, Independence and Union Days, all of which were attended by Ambassadors and Chiefs of Mission from the United States, the United Kingdom, Australia, and other countries. The NLD, in turn, has moderated its public criticism of the regime and announced that it is now prepared to work with the regime on political transition.

Over the past 6 months, the regime has gradually increased access to Aung San Suu Kyi, who has been under house arrest since the talks began in 2000. Visitors have included U.N. Special Rapporteur for Human Rights Paulo Pinheiro, U.N. Special Envoy Razali Ismail, the ILO's High Level Team, representatives of the European Union and U.S. Deputy Assistant Secretary of State Matthew Daley, among others. Aung San Suu Kyi is also now in daily contact with fellow NLD members, including NLD Chairman U Aung Shwe, and NLD Vice Chairman U Tin Oo. The abrupt postponement of U.N. Special Envoy Razali's planned March 19 visit to Burma is of particular concern, especially in light of approval for other meetings. The connection, if any, between this event and the arrest of members of Ne Win's family is unclear.

The United States welcomed the confidence-building process between the government and Aung San Suu Kyi and the release of political prisoners and resumption of some NLD activity. However, we have also urged the regime to move beyond confidence building to a genuine political dialogue with Aung San Suu Kyi that would chart the course for a return to democracy and civilian rule. Critical next steps include release of all remaining political prisoners, the unconditional release of Aung San Suu Kyi from house arrest and increased political rights and freedom of operation for the NLD and other political parties.

Counternarcotics

Burma is one of the world's largest producers of illicit opium, heroin, and methamphetamines. However, its overall output of opium has declined sharply in recent years. In 2001, Burma produced an estimated 865 metric tons of opium, barely one-third of the 2,560 metric tons of opium produced in Burma 5 years earlier. Unfortunately, as opium production has declined, methamphetamine production has soared, particularly in outlying regions that are governed by former insurgents. According to some estimates, as many as 800 million methamphetamine tablets may be produced in Burma each year.

There is no evidence that the government is involved on an institutional level in the drug trade. However, there are reliable reports that individual Burmese officials in outlying areas are either directly involved in drug trafficking or provide protection to those who are. In addition, while the government has encouraged ethnic insurgents who have signed cease-fire agreements to curb narcotics production and trafficking, it has only recently begun to take aggressive law enforcement actions to control these activities. Over the past 6 months, the Burmese Government has cracked down particularly hard on the Kokang region controlled by Peng Jiasheng's Myanmar National Democratic Alliance Army (MNDAA), which had pledged to be opium free by 2000. With the assistance of the People's Republic of China, the Burmese Government staged a series of arrests of major traffickers in all areas of the Kokang, including Laukkai, the capital of Kokang State.

In other areas, the SPDC has moved more cautiously. In areas controlled by the United Wa State Army (UWSA), the principal drug-producing and drug-trafficking organization in Burma, the government has slowly expanded

its administrative presence, but has not yet attempted any aggressive law enforcement operations comparable to those in the Kokang region. The Wa have pledged to end all opium production in their territories by 2005. The United States has urged the government to take law enforcement action and exact other forms of pressure against the Wa narcotics operations even before that deadline is reached.

There have also been significant improvements in Burma's cross-border cooperation with neighboring states. In 2001, Burma signed memoranda of understanding on narcotics control with both China and Thailand. The MOU with China established a framework for joint operations, which in turn led to the series of arrests and renditions of major traffickers in 2001 and 2002. The MOU with Thailand committed both sides to closer police cooperation on narcotics control and to the establishment of three joint ''narcotics suppression coordination stations'' at major crossing points on the border. Thailand has also provided a grant for a crop substitution project in the Wa-controlled regions of southern Shan State. In addition, Burma participated actively in a series of quadrilateral meetings (China, Burma, Laos, and Thailand) on narcotics control that were held in Thailand, Burma, and China in late 2001 and early 2002.

Under pressure from the Financial Action Task Force (FATF), which designated Burma as a ''non-cooperating'' state in June 2001, the Government of Burma has a draft of a new money laundering law, which will reportedly address many of the FATF's concerns. That law, as well as a new Mutual Legal Assistance Law, facilitating Burmese legal and judicial cooperation with other states, should be enacted in 2002.

Despite these recent steps, the United States does not believe that Burma's counternarcotics efforts are commensurate with the scale of the narcotics problem in Burma. We work with the GOB on annual opium yield surveys in Burma, and through UNDCP on opium reduction and crop substitution programs. In September 2001, the United States pledged an additional $1,000,000 to support UNDCP's Wa Alternative Development Project, which has helped reduce opium production in the territories of the United Wa State Army, but made utilization of these funds contingent on the mobilization of matching funds from other donors.

The Quality of Life in Burma

Burma remains one of the world's poorest countries with an average per capita GDP of approximately $300, according to World Bank figures. Primarily an agricultural economy, Burma also has substantial mineral, fishing, and timber resources. However, almost 4 decades of military misrule and mismanagement have produced a chaotic economy characterized by widespread poverty.

Over the past 2 years, a growing government deficit, shortfalls in energy supplies and continuing foreign exchange shortages have hampered economic activity and contributed to a rapid depreciation in Burma's official currency, the kyat. Valued at approximately 360 kyat to the dollar in September 2000, that rate has now risen to approximately 840 kyat per dollar in March 2002 and is expected to rise further over the next 3 months. At the same time, inflation has picked up speed. According to an urban retail price index calculated by the U.S. Embassy, cumulative, point-to-point inflation from January 1, 2001 to January 1, 2002 totaled approximately 52 percent.

Widespread and severe human rights abuses also continued throughout Burma during the reporting period. In ethnic minority areas, in particular, there were many reports of extrajudicial killings, rape, and disappearances. Significant numbers of ethnic minority refugees continue to seek asylum in Thailand. Due to severe restrictions on religious freedom, Burma was again designated a ''country of particular concern'' in 2001 under the International Religious Freedom Act. Prison conditions remained harsh, despite

access to prisons by the International Committee of the Red Cross. During the reporting period, only one political activist was detained for the expression of a dissenting political view; in early December, Dr. Salai Tun Than, a retired university rector and graduate of the University of Wisconsin, was arrested and sentenced to 7 years in prison for passing out leaflets in front of Rangoon's City Hall which called for a civilian government and general elections.

Forced labor also remains an issue of serious concern. In November 2000, the International Labor Organization (ILO) Governing Body concluded that the Government of Burma had not taken effective action to deal with the use of forced labor in the country and, for the first time in its history, called on all ILO members to review their policies toward Burma to ensure that they did not support forced labor. The United States strongly supported this decision.

In recent months, the Government of Burma has indicated that it is more willing to work with the ILO. In September 2001, an ILO High Level Team concluded that the GOB had made an ''obvious, but uneven'' effort to curtail the use of forced labor, but that forced labor persisted, particularly in areas where the government was waging active military campaigns against insurgent forces. It also recommended that the ILO establish a permanent presence in Burma. A second ILO team visited Burma in February 2002 and eventually reached agreement on the appointment of an ILO liaison officer, pending the establishment of a permanent ILO office in Rangoon. However, the government has not been willing to address two other ILO recommendations: appointment of an ombudsman for forced labor issues, and an independent investigation of allegations that villagers in Shan State were killed after complaining to the military about forced labor.

The regime has released approximately 250 political prisoners since the initiation of talks with Aung San Suu Kyi, including approximately 70 over the past 6 months. In response to an appeal from U.N. Special Rapporteur Pinheiro, it has also released, on humanitarian grounds, 318 women prisoners who either had small children or were pregnant. Even with these releases, more than 1,000 political prisoners still remained in prison or under detention in Burma as of March 2002, including over 600 NLD members.

International monitoring of human rights in Burma also improved to some degree in 2001. For the first time in 6 years, the Government of Burma permitted visits (in April and October 2001, and then again in February 2002) by the United Nations Special Rapporteur on Human Rights in Burma. It also allowed the International Committee of the Red Cross to visit all prisons in Burma and reportedly has responded to some ICRC recommendations about prison conditions.

Development of a Multilateral Strategy

United States policy goals in Burma include progress towards democracy, improved human rights, a more effective counternarcotics effort, counterterrorist cooperation, resolving MIA cases from WW II, and addressing the HIV/AIDS epidemic which threatens regional stability and prosperity. We hope that the on-going talks between Aung San Suu Kyi and the military will lead to meaningful democratic change and national reconciliation. We consult regularly, at senior levels, with countries interested in Burma that share our goals.

The United States has co-sponsored annual resolutions at the U.N. General Assembly and the U.N. Commission on Human Rights concerning Burma. We have also supported ILO's unprecedented decision on Burma given Burma's failure to deal effectively with its pervasive forced labor problems. Most importantly, we strongly support the mission of the U.N. Secretary General's Special Envoy for Burma, Razali bin Ismail, who has helped facilitate the regime's talks with Aung San Suu Kyi. We are increasingly concerned

that the Burmese regime is not permitting Mr. Razali to visit Burma with the regularity or frequency needed at this stage of the process.

In coordination with the European Union and other states, the United States has imposed sanctions on Burma aimed at encouraging democratic transition and greater respect for human rights. These sanctions include an arms embargo, a ban on all new U.S. investment in Burma, the suspension of all bilateral aid, the withdrawal of GSP privileges, the denial of OPIC and EXIMBANK programs, visa restrictions on Burma's senior leaders and opposition to all new lending or grant programs by the World Bank, the IMF, the ADB and other international financial institutions in which the United States has a major interest. We downgraded the level of our diplomatic representation from Ambassador to Chargé d'Affaires in 1989 and have maintained at that level.

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Rules and Regulations

Federal Register
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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 19, 20, et al.

RIN 3150–AH11

Minor Errors in Regulatory Text; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing this final rule to make a number of minor corrections to its regulations. This rule is necessary to correct omissions, typographical errors, and erroneous citations and references that appear in the NRC's regulations.

EFFECTIVE DATE: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7163, e-mail *mtl@nrc.gov.*

SUPPLEMENTARY INFORMATION: This rule is necessary to correct omissions, typographical errors, and erroneous citations and references that appear in title 10, chapter I of the Code of Federal Regulations. As to amendatory instruction number 19, this error is purely typographical and has existed since 1984 when 10 CFR part 51 was republished in the **Federal Register** on March 12, 1984 (49 FR 9352), with the error being corrected in this rulemaking. In republishing the S–3 rule in 1984, the Commission stated that ''no changes have been made in the substantive provisions of the S–3 rule'' (49 FR 9364).

Because these amendments involve minor corrections to existing regulations, the NRC has determined that notice and comment under the Administrative Procedure Act, 5 U.S.C. 553(b)(A) and (B), is unnecessary and that good cause exists to dispense with such notice and comment. For these reasons, good cause also exists to dispense with the usual 30-day delay in the effective date. Therefore, the amendments are effective upon their publication in the **Federal Register**.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an Environmental Impact Statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because the final rule makes corrections to the regulations.

Backfit Analysis

The NRC has determined that these amendments do not involve any provision which would impose backfits as defined in 10 CFR chapter I; therefore, a backfit analysis need not be prepared.

List of Subjects

10 CFR Part 1

Organization and functions (government agencies).

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 81

Administrative practice and procedure, Inventions and patents.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following

amendments to 10 CFR parts 1, 19, 20, 21, 32, 34, 39, 51, 55, 73, and 81.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

§ 1.5 [Amended]

2. Section 1.5 is amended to read as follows: In § 1.5(b)(2), add ''Sam Nunn'' between ''USNRC,'' and ''Atlanta''.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

3. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

§ 19.17 [Amended]

4. In § 19.17(a), last sentence, the word ''modifying'' is amended to read ''modify''.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

5. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

§ 20.1002 [Amended]

6. In § 20.1002, in the first sentence, add ''63,'' between ''61'' and ''70''.

§ 20.1703 [Amended]

7. In § 20.1703, the introductory text of paragraph (c)(5) is amended by removing '';'' and adding a '':'' and by removing the word ''before'', and paragraph (c)(5)(i) is amended by adding the word ''Before'' before the word ''The'' and lower casing the ''T'' in the word ''The''.

Appendix D to Part 20 [Amended]

8. In the address for the U.S. Nuclear Regulatory Commission's Region II office, under the Address column, add ''Sam Nunn'' between ''Region II,'' and ''Atlanta''.

9. The telephone number for the U.S. Nuclear Regulatory Commission's Region III office ''(708) 829–9500'' is amended to read ''(630) 829–9500''.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

10. The authority citation for part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

§ 21.21 [Amended]

11. Section 21.21 is amended as follows:

a. In paragraphs (a)(2) and (d)(1), the references to ''§ 21.21(c)(5)'' are amended to read ''§ 21.21(d)(5)'';

b. In paragraph (d)(2) and the introductory paragraph to (d)(3), the references to paragraph ''(c)(1)'' are amended to read ''(d)(1)''.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

12. The authority citation for part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 32.72 [Amended]

13. In § 32.72(b)(2)(iii), the reference to paragraph ''(b)(3)'' is amended to read ''(b)(4)''.

PART 34—LICENSES FOR INDUSTRIAL RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

14. The authority citation for part 34 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.45 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

§ 34.27 [Amended]

15. In § 34.27(d), in the first sentence, the phrase ''paragraphs (b) and (c)'' is amended to read ''paragraph (c)''.

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

16. The authority citation for part 39 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

§ 39.63 [Amended]

17. In § 39.63(h), the reference to ''§ 20.205'' is amended to read ''§ 20.1906''.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

18. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

§ 51.51 Table S–3 [Amended]

19. In § 51.51, Table S–3, in the Total column for the TRU and HLW (deep) line item, the number ''^{11}1.1x10'' is amended to read as ''1.1x10^{7}''.

PART 55—OPERATORS' LICENSES

20. The authority citation for part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

§ 55.5 [Amended]

21. In § 55.5(b)(2)(ii), the address for the U.S. Nuclear Regulatory Commission Region II office is amended to read as follows, by removing ''101 Marietta Street, Suite 2900, Atlanta, GA 30323'' and adding in its place ''Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, GA 30303–8931.''

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

22. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

Appendix A to Part 73 [Amended]

23. In the address for the U.S. Nuclear Regulatory Commission's Region II office, under the Address column, add ''Sam Nunn'' between ''USNRC,'' and ''Atlanta''.

24. The telephone number for the U.S. Nuclear Regulatory Commission's Region III office ''(708) 829–9500'' is amended to read ''(630) 829–9500''.

25. Remove the entry for NRC's Region IV Field Office.

PART 81—STANDARD SPECIFICATIONS FOR THE GRANTING OF PATENT LICENSES

26. The authority citation for part 81 continues to read as follows:

Authority: Secs. 156, 161, 68 Stat. 947, 948, as amended (42 U.S.C. 2186, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 81.8 [Amended]

27. The section heading for § 81.8 is revised to read as follows:

§ 81.8 Information collection requirements: OMB approval.

Dated in Rockville, Maryland, this 10th day of December 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–31873 Filed 12–18–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–26–AD; Amendment 39–12984; AD 2002–25–08]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–45, –50, –80A, –80C2, and –80E1 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes three existing airworthiness directives (AD's), that are applicable to GE CF6–45, –50, –80A, –80C2, and –80E1 turbofan engines. Those AD's currently require specific handling of the GE CF6 series high pressure compressor rotor (HPCR) stage 3–9 spools during a fluorescent penetrant inspection process, and initial and repetitive ultrasonic and eddy current inspections of certain HPCR stage 3–9 spools for cracks. This amendment removes the AD that requires special handling of the spools during fluorescent-penetrant inspection, and adjusts and combines the initial and repetitive inspection requirements, currently listed in two AD's, into one AD for the HPCR stage 3–9 spool. This amendment aligns repetitive inspection requirements with the more stringent initial inspection requirements mandated by AD 2000–16–12, Amendment 39–11868 (65 FR 50623, August 21, 2000) and terminates AD 95–18–14, Amendment 39–9361 (60 FR 46216, September 6, 1995) that is no longer necessary. The actions specified by this AD are intended to prevent cracks, which can cause separation of the HPCR stage 3–9 spool and possible uncontained engine failure.

DATES: Effective January 23, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 23, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7147; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–18–14, Amendment 39–9361 (60 FR 46216, September 6, 1995); AD 99–24–15, Amendment 39–11440 (64 FR 66554, November 29, 1999); and AD 2000–16–12, Amendment 39–11868 (65 FR 50623, August 21, 2000); which are applicable to GE CF6–45, –50, –80A, –80C2, and –80E1 turbofan engines, was published in the **Federal Register** on June 12, 2002, (67 FR 40239). That action proposed to combine the requirements of AD 99–24–15 and AD 2000–16–12 with the following additional changes to:

- Adopt the accelerated initial inspection requirements of AD 2000–16–12 to spools acquiring 7,000 cycles-since-new (CSN) or more in service after July 28, 2001,
- Relax initial compliance requirement for the CF6–45, –50, and CF6–80A 13-inch billet spools to make them consistent with 9 and 10-inch billet spools,
- Add repetitive inspection requirements to the existing one-time inspection requirement for the CF6–80C and –80E series engine spool web and hub-to-web transition areas,
- Replace engine shop visit inspection threshold limits for certain spools with cyclic limits,
- Add a time limit for slot bottom inspection for 13-inch billet spools for CF6–45, –50, –80A engines and for 9-inch and 10-inch billet spools for CF6–45, –50, –80A, and –80C engines,
- Add a time limit for the initial inspection and add repeat inspection intervals for stage 3–5 slot bottom inspection for certain spools,
- Add a time limit for one-time inspection of 8-inch billet 2-piece spools, and
- Provide for an alternative modular inspection for the slot bottoms.

The action was prompted by a report of an uncontained failure of an HPCR 3-9 spool.

The inspections must be done in accordance with the following GE alert service bulletins (ASB's):

- ASB GE CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002.
- ASB GE CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002.
- ASB GE CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002.
- ASB GE CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002.
- ASB GE CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002.
- ASB GE CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002.
- ASB GE CF6–80C2 S/B 72–A0812, Revision 4, dated October 2, 2002.
- ASB GE CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002.
- ASB GE CF6–80C2 S/B 72–A0934, Revision 4, dated October 2, 2002.
- ASB GE CF6–80E1 S/B 72–A0135, Revision 3, dated October 2, 2002.
- ASB GE CF6–80E1 S/B 72–A0126, Revision 5, dated October 2, 2002.
- ASB GE CF6–80E1 S/B 72–A0137, Revision 4, dated October 2, 2002.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Web Inspection May Require Unscheduled Removals of Engines

Several commenters state that inspection of the web per Alert Service Bulletin 72–A0848, after January 27, 2003, at 3,500 CSN is a decrease from inspection requirements prior to that date. The commenters feel that this requirement will force operators to remove engines off wing to do the inspection in order to comply with this proposed AD.

The FAA agrees. Based on information received from several commenters, this requirement will have an adverse economic and operational impact on several operators. We have reviewed a risk analysis that includes an extension of the web inspection requirement by six months, relative to the date proposed in the NPRM, and find that the new risk is still acceptable under the guidelines appropriate for this type of failure. As a result, the requirement has been extended by six months.

Request To Add a FAX Number for the Reporting Requirements

One commenter requests that a FAX number be added to the reporting requirements. Due to time differences around the world, the time allotted for reporting may not be sufficient for other means of communication

The FAA agrees. We have added a facsimile number to the reporting requirements.

Request To Make Editorial Changes to Wording in the Requirements of the AD

One commenter requests certain word changes, such as replacing ''by'' with ''at'', replacing ''within'' with ''before'', etc., and adding certain paragraph headings. These changes are requested to make the AD requirements consistent and more understandable.

The FAA partially agrees. We consider the consistency of wording and the readability of the requirements of the AD to be of highest concern. However, we also feel that many of the suggested changes are stylistic and do not affect the technical accuracy or readability of the AD. We have made some of the requested changes to ensure consistency among the requirements and to improve the readability of the requirements of the AD.

Requested Corrections to CF6–50 8-Inch Requirements

Several commenters request that the title for paragraph (d) be corrected from ''CF6–508-inch'' to ''CF6–50 8-inch.'' The same commenters also request that the FAA correct service bulletin identifications in paragraphs (f), (g), and (j).

The FAA agrees. The title for paragraph (d) and the service bulletin numbers in paragraphs (f), (g), and (j) have been corrected.

Request To Change the Definition of an Engine Shop Visit

Several commenters request that the definition of an engine shop visit be changed to exclude compressor top and bottom case removals for variable stator vane bushing replacements. The commenters feel the inclusion was made to add another condition to the conditions already identified as not constituting engine shop visits (ESV's).

The FAA agrees. We have changed the ESV definition paragraph to exclude the induction of an engine into the shop for the purpose of replacing the variable stator vane bushing.

Requested Clarification of the Requirements for Reinstallation of CF6–50 Spools

One commenter feels that further explanation on the meaning of paragraph (c)(7) is needed.

The FAA agrees. Addition of a heading ''Spool Reinstallation Limit'' in this paragraph helps in clarifying the intent of this paragraph. Furthermore, as the paragraph states, an engine with a spool that has 10,500 CSN or more may not be installed (*i.e.* returned to service). The paragraph does not require the removal of an installed engine that has a spool with 10,500 CSN or more.

Request To Clarify Paragraph (a)(3)(ii) of This AD

One commenter requests clarification of paragraph (a)(3)(ii). The commenter feels that paragraph (a)(3)(ii) is necessary to do paragraphs (a)(3)(i) and (a)(3)(iii). The commenter feels that paragraphs (a)(3)(i) and (a)(3)(iii) are redundant to (a)(3)(ii) and can be deleted to simplify the requirements.

The FAA does not agree with deleting paragraphs (a)(3)(i) and (a)(3)(iii). A spool that is exposed as a piece part (paragraph (a)(3)(i)) is also exposed as a rotor (paragraph (a)(3)(ii)). Likewise, a spool that requires a hub inspection in accordance with ASB CF6–50 S/B 72–A1108 hub inspection (paragraph (a)(3)(iii)) must be exposed at least to a rotor level {(a)(3)(ii)} in order to do a module level inspection. In this sense, (a)(3)(i) and (a)(3)(iii) are redundant to (a)(3)(ii). However, each condition represents a common but distinct and different level of planned engine maintenance, therefore it was advisable to address each condition specifically for clarity.

Request To Clarify That Paragraph (a)(4)(iii) Is Correct

One commenter requests that the FAA verify that paragraph (a)(4)(iii) and Table 5 are correct. The commenter feels that Table 5 of the AD causes a jump in the inspection interval. The commenter provides a correction to Table 5 of the AD to correct a perceived error in that Table.

The FAA has not been able to confirm the commenter's findings. The cyclic intervals for the Table 5 requirements are A; 3,500 cycles, B; 3,000 cycles, C; 3,000 cycles, D; 2,500 cycles, E; 2,500 cycles, F; 2,000 cycles, and G; 2,000 cycles. These intervals are as intended.

Concern About Misinterpretation of the Inspection Deadline

One commenter states that one of the requirements of this proposed rule may be misread as extending the inspection deadline of AD 2000–16–12 to beyond July 28, 2001. The commenter also suggests that if all the high-risk spools have been inspected, the proposed rule should be expedited, since one year has passed since the deadline of AD 2000–16–12.

The FAA agrees with the commenter on the need to expedite issuance of this AD. While the statement in the Discussion Section of the preamble of the proposal may be misinterpreted, the preamble is not regulatory and in fact, even the structure of the preamble changes when an NPRM is converted into a final rule. However, we have made changes to the statement in the **SUPPLEMENTARY INFORMATION** section to clarify the intent of this final rule. The intent of the proposed rule is to apply the same requirement on the population of the spools that would acquire 7,000 CSN after July 28, 2001. In regard to the comment inquiring if all spools have been inspected, we are not aware of any spool with 7,000 CSN or more that has not been inspected as required by AD 2000–16–12.

Request To Include Fluorescent Penetrant Inspection (FPI) Requirements

One commenter suggests that AD 95–18–14 that addresses FPI of the 3–9 spool should be included, since Standard Practices are only a suggestion and not a law. The commenter makes this comment out of concern that under this proposed rule the benefit of an additional inspection is eliminated.

The FAA does not agree. The requirements promulgated by AD 95–18–14 ensure that a spool is properly wetted internally prior to the FPI. Although FPI of the 3–9 spool is desired for the areas not affected by this AD, FPI is not the best technique for the inspection program established by this AD. While FPI is effective only for detection of surface cracks, the combination of ultrasonic and eddy current inspections required by this AD provide both surface and subsurface inspections that are of equal or greater sensitivity than FPI. The FPI required by AD 95–18–14 was an emergency measure instituted in 1995 after discovery of cracking in the disk web area, an area not then covered by ultrasonic and eddy current inspections. These inspection methods were subsequently developed and incorporated into the inspection plan. Additionally, AD 95–18–14 did not prescribe inspection intervals, only inspection techniques, therefore, the benefit of AD 95–18–14 was not considered in the risk analysis associated with the current AD's.

Additional Spool Part Numbers (P/N's) as a Result of Unrelated Repairs

One commenter expresses a concern that additional spool P/N's, which have been generated due to unrelated repairs on spools that are subject to the inspection requirements of this AD, are not being captured by the AD. The commenter feels that these P/N's should be added to the AD. The commenter raises this issue to ensure that spools with P/N's that were not included in the proposed rule are not excluded from this inspection program.

The FAA agrees. The new P/N's will be incorporated in this AD. However, their incorporation does not increase the originally affected spool population size.

New Revisions to the Applicable Service Bulletins

One commenter, the manufacturer, advises the FAA that the applicable service bulletins may be revised for nontechnical reasons. The commenter feels that the latest revisions of the service bulletins need to be incorporated into the AD.

The FAA agrees. The revision numbers and dates have been incorporated into this final rule.

Request To Change Paragraph (j)(2)

One commenter requests that paragraph (j)(2) be changed to ensure that the hub and web receive an initial inspection if either of the two areas were not previously inspected. The same commenter suggests that paragraph (j)(2) be split into two paragraphs to properly specify the inspection deadlines for the hub and for the web, now that the originally proposed deadlines have been changed to accommodate the economic and operational burden associated with the web inspection.

The FAA agrees. We have changed paragraph (j)(2) of this AD. Because of the new schedule requirements, two paragraphs, each with its own schedule, are appropriate and the change has been made.

Request To Clarify ''Replace Before Further Flight'' Requirement on CF6–50 Spools

One commenter observes that the ''replace before further flight'' requirements for the CF6–50 spools include the reject limits of service bulletin CF6–50 S/B 72–A1131, while the preceding paragraph does not include this service bulletin. The commenter raised this comment out of concern that the inspection requirement per service bulletin CF6–50 S/B 72–A1131 was not identified in the preceding step.

The FAA partially agrees. In the current text, an inference may be made that spools must be inspected to all three referenced bulletins at each repeat inspection. The spool disposition requirements apply to results of all prescribed inspections specified in all the steps of the pertinent paragraph in the AD and not just to the preceding step. Therefore, for further clarification a heading ''Spool Disposition'' has been inserted.

Request To Add a Heading of ''Spool Reinstallation Limit''

One commenter requests that the heading Spool Reinstallation Limit be added before the applicable paragraphs. The commenter feels that the addition will clarify the intent of the paragraphs.

The FAA agrees. We have added the heading to the applicable paragraphs.

Concern Over the Availability of Training and Equipment

One commenter expresses concern that the requirements of ASB CF6–80C2 72–A0934, Revision 3, can not be done because the equipment and training necessary to carry out this inspection are not available at this time. The commenter makes this comment out of concern that the prescribed inspections could not be done, per the proposed rule timetables, since there was no scheduled delivery of the necessary equipment and associated training.

The FAA agrees. However, this issue has been addressed by the engine manufacturer. Both equipment and training will be available in time to enable the commenter to comply with the requirements of this AD, therefore, no changes have been made.

Request To Change the Definition of a Shop Visit

One commenter states that the introduction of an engine into the shop solely for the 3–9 spool inspection should not be considered a shop visit. The request is made so that the stage 3–5 dovetail slot bottom inspection for the CF6–80C2 13-inch billet spools would not be forced if the spools could otherwise comply using the module level inspection. The hub and web inspections can be done at module level merely by removing the fan module from the core. The slot bottom inspection requires additional disassembly to remove the compressor top case. The request is made to avoid this additional disassembly.

The FAA disagrees. Material testing and stress analysis indicate that the dovetail slot bottoms have a dwell-fatigue limitation. Accordingly, the rule requires initial slot bottom inspection at the earliest exposure (piece-part exposure or rotor exposure, which is realized upon top case removal) but not later than the next required inspection of the hub and/or web for dwell fatigue

cracking. As the cracking mode is the same for all areas, the FAA can not apply lesser criteria to the slot bottoms.

Request To Include the 3–5 Dovetail Slot Bottom Inspection at Piece-Part Level Only

One commenter requests that the repeat inspection of the CF6–80C 13-inch billet spool stage 3–5 dovetail slot bottoms be required at piece-part exposure only. Accomplishment of this inspection at a module level would require, at a minimum, the removal of the compressor top case.

The FAA disagrees for reasons stated in the answer to the previous comment.

Request To Clarify the Reference Date for the Initial Inspection

One commenter states that there is no reference date for the initial inspection required in paragraph (a)(3) from which the operator is to determine items (i), (ii), and (iii) under this paragraph. The commenter uses the example that item (i) requires an inspection at the first piece-part exposure (PPE) after 1,000 CSN. The spool may have had several PPE's after 1,000 CSN in its life but never had the requirement to inspect at those visits. The commenter requests clarification of the reference date in this paragraph to ensure the proper time set.

The FAA disagrees. The proposal does not contain new requirements. It consolidates requirements of existing airworthiness directives, which include paragraph (a)(3). In the past, if an opportunity to have a PPE arose as the commenter states, the requirement of AD 99–24–15 would have been applicable. Additionally, the cyclic requirements of steps (i) and (ii) are associated with the cyclic life of the spool and not an independent cyclic interval. The third step (iii) also does not need the association with the effective date of this AD. Incorporation of the change the commenter proposes would conflict with requirements of the existing AD relative to the dovetail inspection. The proposed change would also affect additional paragraphs of the rule, not identified by the commenter, where similar arguments can be made.

Potential Confusion Over Requirements for Piece-Part Inspections

One commenter, the manufacturer, informs the FAA that a potential for confusion exists regarding the requirements for the one-time hub inspection of 8-inch billet spools. The existing wording in certain ASB's could be interpreted such that a modular level inspection of the hub could be performed, when in fact, piece-part inspection using Procedure A is required to achieve the intended level of safety. The manufacturer has revised the appropriate ASB's to add this clarification and suggests additional wording be added to this rule to ensure the correct procedure is used.

The FAA agrees. We have clarified the hub inspection requirements for affected spools in paragraphs (d)(1), (h)(1), (k)(1), and (m)(1).

Request To Correct P/N's and SN's for CF6–50 16-Inch and 13-Inch Billets

The same commenter states that the part number and serial number relationships for the CF6–50 16-inch and 13-inch billet spools relative to Table 2 were incorrect in the information that it sent to the FAA and need to be corrected in paragraphs (a) and (b), respectively.

The FAA agrees. We have made the appropriate changes to the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Analysis

There are approximately 3,147 engines of the affected design in the worldwide fleet. The FAA estimates that 1,289 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 238 work hours per engine to perform the proposed actions. The average labor rate is $60 per work hour. Required parts would cost approximately $35,000 per engine. In addition, because of the previous AD actions, the FAA estimates that only 72 percent (928 engines) of the engines installed on airplanes of U.S. registry would be affected. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $45,731,840.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendments 39–9361 (60 FR 46216, September 6, 1995), 39–11440 (64 FR 66554, November 29, 1999), and 39–11868 (65 FR 50623, August 21, 2000), and by adding a new airworthiness directive, Amendment 39–12984, to read as follows:

2002–25–08 General Electric Company (GE): Docket No. 2001–NE–26–AD. Supersedes AD 95–18–14, Amendment 39–9361; AD 99–24–15, Amendment 39–11440; and AD 2000–16–12, Amendment 39–11868.

*Applicability:*This airworthiness directive (AD) is applicable to GE CF6–45, –50, –80A, –80C2, and –80E1 turbofan engines with high pressure compressor rotor (HPCR) stage 3–9 spools with part numbers (P/N's) listed in the following Table 1 installed:

TABLE 1

Engine model	HPCR stage 3–9 spool P/N
CF6–45/50 Series Engines	9136M89G02, 9136M89G03, 9136M89G06, 9136M89G07, 9136M89G08, 9136M89G09, 9136M89G17, 9136M89G18, 9136M89G19, 9136M89G21, 9136M89G22, 9136M89G27, 9136M89G29, 9253M85G01, 9253M85G02, 9273M14G01, 9331M29G01.
CF6–80A Series Engines	9136M89G10, 9136M89G11, 9136M89G20, 9136M89G21, 9136M89G22, 9136M89G27, 9136M89G28
CF6–80C2 Series Engines	1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1333M66G10, 1781M52P01, 1781M52P02, 1781M53G01, 1781M53G02 1781M53G03, 1781M53G04, 1781M53G05, 1781M53G06, 1781M53G07, 1781M53G08, 1781M53G09, 1781M53G10, 1854M95P01, 1854M95P02, 1854M95P03, 1854M95P04, 1854M95P05, 1854M95P06, 1854M95P07, 1854M95P08, 9380M28P05.
CF6–80E1 Series Engines	1669M22G01, 1669M22G03, 1782M22G01, 1782M22G02, 1782M22G04.

These engines are installed on, but not limited to, Airbus A300, A310, and A330 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 and MD–11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (p) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To detect cracks, which can cause separation of the HPCR stage 3–9 spool and possible uncontained engine failure, do the following:

CF6–45 and –50 16-Inch Billet Spools

(a) For CF6 HPCR stage 3–9 spool, part numbers (P/N's) 9136M89G02 and 9136M89G06; and for P/N's 9136M89G08, 9253M85G02, 9273M14G01, 9331M29G01 with serial numbers (SN's) listed in the following Table 2, do the following:

TABLE 2

MPOE3486	MPOE3487	MPOE3488	MPOE3489	MPOE3490	MPOE3491	MPOE3492
MPOG3832	MPOG3833	MPOG3834	MPOG3835	MPOG3836	MPOG3837	MPOG3838
MPOG3839	MPOG3840	MPOG3841	MPOG3842	MPOG3843	MPOG3844	MPOG3845
MPOG3846	MPOG3847	MPOG3848	MPOG3850	MPOG3851	MPOG5228	MPOG5230
MPOG5231	MPOG5232	MPOG6216	MPOG6727	MPOG6728	MPOG6729	MPOG6730
MPOG6731	MPOG6732	MPOG6733	MPOG6735	MPOG6736	MPOG6738	MPOG6739
MPOG6740	MPOG6741	MPOG6742	MPOG6743	MPOG6744	MPOG6745	MPOG6746
MPOG7713	MPOG7714	MPOG7715	MPOG7716	MPOG7717	MPOG7718	MPOG7719
MPOG7720	MPOG7721	MPOG7722	MPOG7723	MPOG7724	MPOG7725	MPOG7726
MPOG7727	MPOG7728	MPOG7729	MPOG7730	MPOG7731	MPOG7732	MPOG7733
MPOG7734	MPOG7735	MPOG7736	MPOG7737	MPOG7738	MPOG7739	MPOG7740
MPOG7741	MPOG7742	MPOG7743	MPOG7744	MPOG7819	MPOG7820	MPOG7821
MPOG7822	MPOG7823	MPOG7824	MPOG7825	MPOG7826	MPOG7827	MPOG7828
MPOG7829	MPOG7830	MPOG7831	MPOG7832	MPOG7833	MPOG7834	MPOG7835
MPOG7836	MPOG7837	MPOG7838	MPOG7839	MPOG8822	MPOG8823	MPOG8824
MPOG8825	MPOG8826	MPOG8827	MPOG8828	MPOG8829	MPOG8830	MPOG8831
MPOG8832	MPOG8833	MPOG8834	MPOG8835	MPOG8836	MPOG8837	MPOG9185
MPOG9186	MPOH0289	MPOH0290	MPOH0291	MPOH0292	MPOH0293	MPOH0294
MPOH0295	MPOH0296	MPOH0297	MPOH0298	MPOH0299	MPOH0300	MPOH0301
MPOH0302	MPOH0303	MPOH0304	MPOH0305	MPOH1805	MPOH2040	MPOH2041
MPOH2042	MPOH2043	MPOH2044	MPOH2045	MPOH2046	MPOH2047	MPOH2048
MPOH2049	MPOH2050	MPOH2051	MPOH2052	MPOH2053	MPOH2054	MPOH2055
MPOH2056	MPOH2057	MPOH2058	MPOH2059	MPOH2060	MPOH2061	MPOH2062
MPOH2829	MPOH2830	MPOH2831	MPOH2832	MPOH2833	MPOH2834	MPOH2835
MPOH2836	MPOH2837	MPOH2838	MPOH2839	MPOH2840	MPOH2841	MPOH2842
MPOH2843	MPOH2844	MPOH2845	MPOH2846	MPOH2847	MPOH2848	MPOH2849
MPOH2850	MPOH2851	MPOH2852	MPOH2853	MPOH2854	MPOH2855	MPOH2856
MPOH2857	MPOH2858	MPOH4307	MPOH4308	MPOH4309	MPOH4310	MPOH4311
MPOH4312	MPOH4313	MPOH5277	MPOH5278	MPOH5279	MPOH5280	MPOH5281
MPOH5282	MPOH5283	MPOH5520	MPOH5530	MPOH5531	MPOH5532	MPOH5533
MPOH5534	MPOH5535	MPOH5536	MPOH5537	MPOH5538	MPOH5539	MPOH5540
MPOH5541	MPOH5542	MPOH5543	MPOH5544	MPOH5545	MPOH5546	MPOH5547
MPOH5548	MPOH5549	MPOH5550	MPOH5551	MPOH5552	MPOH5553	MPOH5554
MPOH7020	MPOH7021	MPOH7022	MPOH7023	MPOH7024	MPOH7025	MPOH7026
MPOH7027	MPOH7028	MPOH7030	MPOH7960	MPOH7965	MPOH7966	MPOH7967
MPOH7968	MPOH7969	MPOH7970	MPOH7971	MPOH7972	MPOH7973	MPOH7974
MPOH7975	MPOH8638	MPOH8639	MPOH8640	MPOH8641	MPOH8642	MPOH8643
MPOH8644	MPOH8645	MPOH8646	MPOH8647	MPOH8648	MPOH8649	MPOH8650
MPOH8651	MPOH8652	MPOH8653	MPOH8654	MPOH8655	MPOH8656	MPOH8657
MPOH8658	MPOH8659	MPOH8677	MPOH8678	MPOH8679	MPOH8680	MPOH8682
MPOH8683	MPOH8684	MPOJ1796	MPOJ1797	MPOJ1798	MPOJ1799	MPOJ1800

TABLE 2—Continued

MPOJ1801	MPOJ1803	MPOJ1804	MPOJ1806	MPOJ1930	MPOJ1931	MPOJ1932
MPOJ1933	MPOJ1934	MPOJ1935	MPOJ1936	MPOJ1938	MPOJ1939	MPOJ1940
MPOJ1941	MPOJ1942	MPOJ1943	MPOJ1944	MPOJ1945	MPOJ1946	MPOJ1947
MPOJ1948	MPOJ1949	MPOJ1950	MPOJ1951	MPOJ1953	MPOJ1954	MPOJ1955
MPOJ1956	MPOJ1957	MPOJ1958	MPOJ2420	MPOJ2421	MPOJ2422	MPOJ2423
MPOJ2424	MPOJ2425	MPOJ2426	MPOJ2427	MPOJ2428	MPOJ2429	MPOJ2430
MPOJ2431	MPOJ2432	MPOJ2433	MPOJ2434	MPOJ2435	MPOJ2436	MPOJ2437
MPOJ2438	MPOJ2439	MPOJ2440	MPOJ2441	MPOJ2442	MPOJ2443	MPOJ2444
MPOJ2445	MPOJ2446	MPOJ2447	MPOJ2448	MPOJ2449	MPOJ2450	MPOJ4173
MPOJ4174	MPOJ5185	MPOJ5186	MPOJ6035	MPOJ6036	MPOJ6039	MPOJ6040
MPOJ6041	MPOJ6042	MPOJ6043	MPOJ6044	MPOJ6045	MPOJ6046	MPOJ6047
MPOJ6048	MPOJ6049	MPOJ6050	MPOJ6051	MPOJ6052	MPOJ6053	MPOJ6054
MPOJ6055	MPOJ6056	MPOJ6057	MPOJ6058	MPOJ6059	MPOJ6060	MPOJ6061
MPOJ6062	MPOJ6063	MPOJ6064	MPOJ6065	MPOJ6066	MPOJ6067	MPOJ6068
MPOJ6500	MPOJ6501	MPOJ6502	MPOJ6503	MPOJ6505	MPOJ6506	MPOJ6507
MPOJ6508	MPOJ6509	MPOJ6510	MPOJ6511	MPOJ6512	MPOJ6513	MPOJ6514
MPOJ6515	MPOJ6516	MPOJ6517	MPOJ7632	MPOJ7633	MPOJ7634	MPOJ7635
MPOJ7636	MPOJ7637	MPOJ7638	MPOJ7639	MPOJ7640	MPOJ7641	MPOJ7642
MPOJ7643	MPOJ8046	MPOJ8047	MPOJ8048	MPOJ8049	MPOJ8050	MPOJ8051
MPOJ9308	MPOJ9309	MPOJ9310	MPOJ9311	MPOJ9312	MPOJ9313	MPOJ9314
MPOJ9315	MPOK1233	MPOK1234	MPOK1235	MPOK1236	MPOK1237	MPOK1238
MPOK1239	MPOK1240	MPOK1824	MPOK1825	MPOK1826	MPOK1827	MPOK1828
MPOK1829	MPOK1830	MPOK1831	MPOK1832	MPOK2694	MPOK2695	MPOK3067
MPOK3068	MPOK3069	MPOK3070	MPOK3071	MPOK4659	MPOK4660	MPOK4661
MPOK4662	MPOK4663	MPOK4664	MPOK4665	MPOK4666	MPOK4667	MPOK5082
MPOK5083	MPOK5084	MPOK5085	MPOK5086	MPOK5087	MPOK5088	MPOK5520
MPOK5521	MPOK5522	MPOK5955	MPOK5956	MPOK5957	MPOK5958	MPOK5959
MPOK5960	MPOK5961	MPOK5962	MPOK5963	MPOK5964	MPOK6247	MPOK6248
MPOK6249	MPOK6250	MPOK6251	MPOK6252	MPOK6253	MPOK6254	MPOK6255
MPOK6256	MPOK6257	MPOK6715	MPOK6716	MPOK6823	MPOK6824	MPOK6825
MPOK6826	MPOK6827	MPOK6828	MPOK6829	MPOK6830	MPOK6831	MPOK7226
MPOK7227	MPOK7228	MPOK7229	MPOK7230	MPOK7231	MPOK7232	MPOK7233
MPOK7234	MPOM2128	MPOM2129	MPOM2130	MPOM2131	MPOM2132	MPOM2133
MPOM2134	MPOM2135	MPOM2136	MPOM2137	MPOM2138	MPOM2357	MPOM2358
MPOM2359	MPOM2360	MPOM2361	MPOM2362	MPOM2363	MPOM2364	MPOM2365
MPOM2366	MPOM2461	MPOM2462	MPOM5521	MPOM5522	MPOM5523	MPOM5524
MPOM5525	MPOM5526	MPOM5527	MPOM5528	MPOM5529	MPOM5530	MPOM5531
MPOM5532	MPOM5533	MPOM5534	MPOM5535	MPOM5536	MPOM5537	MPOM6151
MPOM6152	MPOM6153	MPOM6154	MPOM6155	MPOM6156	MPOM6157	MPOM6158
MPOM6159	MPOM6160	MPOM6161	MPOM6162	MPOM7087	MPOM7088	MPOM7089
MPOM7091	MPOM7092	MPOM7093	MPOM7094	MPOM7095	MPOM7096	MPOM7097
MPOM7098	MPOM7099	MPOM7100	MPOM7101	MPOM7102	MPOM7103	MPOM7104
MPOM7105	MPOM7106	MPOM7107	MPOM7108	MPOM7109	MPOM8297	MPOM8298
MPOM8299	MPOM8300	MPOM8301	MPOM8302	MPOM9246	MPOM9257	MPOM9258
MPOM9259	MPOM9260	MPOM9261	MPOM9262	MPOM9265	MPOM9721	MPOM9722
MPOM9723	MPON0051	MPON0052	MPON0053	MPON0055	MPON0056	MPON0057
MPON0058	MPON0059	MPON0060	MPON0061	MPON0062	MPON0063	MPON0064
MPON0065	MPON0066	MPON0067	MPON0068	MPON0069	MPON0073	MPON0074
MPON0075	MPON0076	MPON1077	MPON1078	MPON1079	MPON1080	MPON1081
MPON1082	MPON1084	MPON1085	MPON1086	MPON1087	MPON1088	MPON1089
MPON1090	MPON1091	MPON1092	MPON1093	MPON1094	MPON1095	MPON1096
MPON1097	MPON1098	MPON1099	MPON1100	MPON1642	MPON4250	MPON4252
MPON4254	MPON4255	MPON4256				

Initial Inspection

(1) If the spool has not already been inspected using one of the alert service bulletins (ASB's) or service bulletins (SB's) listed in Column A of the following Table 3; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect hub and bore in accordance with alert service bulletin (ASB) CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002, and the following compliance times:

TABLE 3

CF6–45 and –50 SB No.	Procedures (70–32–XX) in Standard Practices Manual GEK9250			
Column A	Column B	Column C	Column D	Column E
SB 72–888, Revision 3, dated January 31, 1991.	70–32–09, Revision 71, dated October 1, 1995.	70–32–10, 71, Revision dated October 1, 1995.	70–32–13, Temporary Revision (TR), 70–25, dated August 26, 1996.	70–32–14, TR 70–26, dated August 26, 1996.
SB 72–888, Revision 4, dated March 28, 1991.	70–32–09, Revision 72, dated November 15, 1996.	70–32–10, Revision 72, dated November 15, 1996.	70–32–13, Revision 72, dated November 15, 1996.	70–32–14, Revision 72, dated November 15, 1996.

TABLE 3—Continued

CF6–45 and –50 SB No.	Procedures (70–32–XX) in Standard Practices Manual GEK9250			
Column A	Column B	Column C	Column D	Column E
SB 72–888, Revision 5, dated November 7, 1994.	70–32–09, Revision 74, dated May 1, 1998.	70–32–10, Revision 74, dated May 1, 1998.	70–32–13, Revision 73, dated November 1, 1997.	70–32–14, Revision 73, dated November 1, 1997.
SB 72–888, Revision 6, dated December 22, 1995.	.....	70–32–10, Revision 75, dated December 15, 1998.	70–32–13, Revision 75, dated December 15, 1998.	70–32–14, Revision 75, dated December 15, 1998.
SB 72–1000, Original dated December 14, 1990.	.....	.....	70–32–13, TR 70–41, dated February 10, 1999.	70–32–14, TR 70–42, dated February 10, 1999.
SB 72–1000, Revision 1, dated March 28, 1991.	.....	.....	70–32–13, Revision 76, dated May 15, 1999.	70–32–14, Revision 76, dated May 15, 1999.
SB 72–1000, Revision 2, dated September 9, 1993.	.....	.....	70–32–17, TR 70–39, dated December 15, 1998.	70–32–18, TR 70–40, dated December 15, 1998.
SB 72–1000, Revision 3, dated December 22, 1995.	.....	.....	70–32–17, Revision 76, dated May 15, 1999.	70–32–18, Revision 76, dated May 15, 1999.
SB 72–1108, Original, dated November 6, 1995.	.....	.....	70–32–17, TR 70–47, dated October 28, 1999.	70–32–18, TR 70–48, dated October 28, 1999.
SB 72–1108, Revision 1, dated July 29, 1996.				
ASB 72–A1108, Revision 2, dated October 28, 1999.				
ASB 72–A1108, Revision 3, dated November 12, 1999.				
ASB 72–A1108, Revision 4, dated June 6, 2001.				
ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002.				

(i) For spools with greater than 3,500 cycles-since-new (CSN) on the effective date of this AD, inspect before further flight.

(ii) For spools with 3,500 or fewer CSN, on the effective date of this AD, inspect at the first piece-part exposure (PPE) after 1,000 CSN or before 3,500 CSN, whichever occurs earlier.

(2) For spools that have not been inspected using ASB CF6–50 S/B 72-A1131, Revision 4, dated October 2, 2002, or an earlier revision of ASB CF6–50 S/B 72–A1131 or SB 72–1131, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002, at the first PPE after 1,000 CSN, but before 4,000 additional cycles in-service (CIS) after the effective date of this AD.

(3) For spools that have not been inspected using ASB CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002, or an earlier revision of ASB CF6–50 S/B 72–A1157, inspect the stage 3–5 dovetail slot bottoms in accordance with the requirements of ASB CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1000 CSN, or

(ii) The first HPC rotor exposure after 1000 CSN, or

(iii) The next required inspection to ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002.

Repetitive Inspection

(4) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, reinspect the hub and bore in accordance with the requirements of ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002, and the stage 3–5 dovetail slot bottoms in accordance with ASB CF6–50 S/B 72-A1157, Revision 4, dated October 2, 2002, at the earliest of:

(i) Each PPE with more than 1,000 cycles-since-last-inspection (CSLI) and 3,500 CSN, or

(ii) From July 29, 2001 through January 27, 2003, before the cycle limits of the following Table 4:

TABLE 4

CSN at last inspection	Repeat inspection by
(A) 6,000 or fewer CSN	3,500 CSLI.
(B) 6,001 to 7,000 CSN	9,500 CSN.
(C) 7,001 to 8,000 CSN	2,500 CSLI.
(D) 8,001 to 8,500 CSN	10,500 CSN.
(E) 8,501 or more CSN	2,000 CSLI.

(iii) After January 27, 2003, before the cycle limits of the following Table 5:

TABLE 5.

CSN at last inspection	Repeat inspection by
(A) 5,000 or fewer CSN	3,500 CSLI.
(B) 5,001 to 5,500 CSN	8,500 CSN.
(C) 5,501 to 6,500 CSN	3,000 CSLI.
(D) 6,501 to 7,000 CSN	9,500 CSN.
(E) 7,001 to 8,000 CSN	2,500 CSLI.
(F) 8,001 to 8,500 CSN	10,500 CSN.
(G) 8,501 or more CSN	2,000 CSLI.

Spool Disposition

(5) If inspection findings equal or exceed the reject limits established by ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002; or ASB CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002; or ASB CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002, replace spool before further flight.

CF6–45 and –50 13-inch Billet Spools

(b) For CF6 HPC Rotor Stage 3–9 Spool, P/N's 9136M89G03, 9136M89G07, 9136M89G09, 9136M89G17, 9136M89G18, 9253M85G01, and for P/N's 9136M89G08, 9253M85G01, 9273M14G01, and 9331M29G01 with serial numbers that are not listed in Table 2, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN on the effective date of this AD and has not

already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002 before further flight.

(2) If the spool has 7,000 or fewer CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first engine shop visit (ESV) after 4,000 CSN, or

(iii) From July 29, 2001, through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 4,000 CSN.

(3) For spools that have not been inspected using ASB CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002, or an earlier revision of ASB CF6–50 S/B 72–A1131 or SB 72–1131, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

(4) For spools that have not been inspected using ASB CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002, or an earlier revision of ASB CF6–50 S/B 72–A1157, inspect the stage 3–5 dovetail slot bottoms in accordance with the requirements of ASB CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

Repetitive Inspection

(5) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, reinspect the hub and bore in accordance with the requirements of ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 4,000 CSN, or

(ii) Each ESV with more than 2,000 CSLI and 4,000 CSN, or

(iii) Before 4,000 CSLI.

Spool Disposition

(6) If inspection findings equal or exceed the reject limits established by ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002; or ASB CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002; or ASB CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002, replace spool before further flight.

CF6–45 and –50 9 and 10-Inch Billet Spools

(c) For CF6 HPCR stage 3–9 spool, P/N's 9136M89G19, 9136M89G21, 9136M89G22 and 9136M89G27, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect the hub and bore in accordance with ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002 before further flight.

(2) If the spool has 7,000 or fewer CSN on the effective date of this AD, and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect the hub and bore in accordance with ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 3,000 CSN, or

(iii) From July 29, 2001 through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 3,500 CSN.

(3) For spools that have not been inspected using ASB CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002, or an earlier revision of ASB CF6–50 S/B 72–A1131 or SB CF6–50 S/B 72–1131, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

(4) For spools that have not been inspected using ASB CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002, or an earlier revision of ASB CF6–50 S/B 72–A1157, inspect the stage 3–5 dovetail slot bottom in accordance with the requirements of ASB CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

Repetitive Inspection

(5) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, reinspect the hub and bore in accordance with the requirements of ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 3,500 CSN, or

(ii) From July 29, 2001, through January 27, 2003, before the cycle limits of the following Table 6, or:

TABLE 6

CSN at last inspection	Reinspect by
(A) 3,500 or fewer CSN	7,000 CSN.
(B) 3,501 to 6,000 CSN	3,500 CSLI.
(C) 6,001 to 7,000 CSN	9,500 CSN.
(D) 7,001 to 8,000 CSN	2,500 CSLI.
(E) 8,001 to 8,500 CSN	10,500 CSN.
(F) 8,501 or more CSN	2,000 CSLI.

(iii) After January 27, 2003, before the cycle limits of Table 5.

Spool Disposition

(6) If inspection findings equal or exceed the reject limits established by ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002; or ASB CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002; or ASB CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002; replace spool before further flight.

Spool Reinstallation Limit

(7) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool, P/N's 9136M89G19, 9136M89G21, 9136M89G22, and 9136M89G27, installed where the spool has 10,500 or more CSN.

CF6–45 and –50 8-Inch Billet 2-Piece spools

(d) For CF6 HPCR stage 3–9 spool, P/N 9136M89G29, do the following:

(1) If the spool has not already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with the piece-part level inspection of ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(2) For spools that have not been inspected using ASB CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002, or an earlier revision of ASB CF6–50 S/B 72–A1131 or SB 72–1131, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(3) For spools that have not been inspected using ASB CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002, or an earlier revision of ASB 72–A1157, inspect the stage 3–5 dovetail slot bottom in accordance with the requirements of ASB CF6–50 S/B 72–A1157, Revision 4, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

Spool Disposition

(4) If inspection findings equal or exceed the reject limits established by ASB CF6–50 S/B 72–A1108, Revision 5, dated October 2, 2002; or ASB CF6–50 S/B 72–A1131, Revision 4, dated October 2, 2002; or ASB CF6–50 S/B 72–A1157, Revision 4, dated

October 2, 2002; replace spool before further flight.

CF6–80A 16-Inch Billet Spools

(e) For CF6 HPCR stage 3–9 spool, P/N's 9136M89G10 with SN's MPOM0054, MPOM7090, MPOM8303, MPOM8304, MPOM9263, MPOM9264, MPON0054, MPON0071, MPON0072, MPON1643, MPON4251, or MPON4253, do the following:

Initial Inspection

(1) If the spool has not already been inspected using one of the ASB's or SB's listed in Column A of the following Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002, and the following compliance times:

TABLE 7

CF6–80A SB No.	Procedures (70–32–XX) in standard practices manual GEK9250			
Column A	Column B	Column C	Column D	Column E
SB 72–500, Revision 3, dated March 19, 1991.	70–32–09, Revision 71, dated October 1, 1995.	70–32–10, Revision 71, dated October 1, 1995.	70–32–13, Temporary Revision (TR), 70–25, dated August 26, 1996.	70–32–14, TR 70–26, dated August 26, 1996.
SB 72–500, Revision 4, dated July 1, 1991.	70–32–09, Revision 72, dated November 15, 1996.	70–32–10, Revision 72, dated November 15, 1996.	70–32–13, Revision 72, dated November 15, 1996.	70–32–14, Revision 72, dated November 15, 1996.
SB 72–500, Revision 5, dated November 7, 1994.	70–32–09, Revision 74, dated May 1, 1998.	70–32–10, Revision 74, dated May 1, 1998.	70–32–13, Revision 73, dated November 1, 1997.	70–32–14, Revision 73, dated November 1, 1997.
SB 72–500, Revision 6, dated December 22, 1995.	.....	70–32–10, Revision 75, dated December 15, 1998.	70–32–13, Revision 75, dated December 15, 1998.	70–32–14, Revision 75, dated December 15, 1998.
SB 72–583, Original, dated December 20, 1990.	.....	.....	70–32–13, TR 70–41, dated February 10, 1999.	70–32–14, TR 70–42, dated February 10, 1999.
SB 72–583, Revision 1, dated March 18, 1991.	.....	.....	70–32–13, Revision 76, dated May 15, 1999.	70–32–14, Revision 76, dated May 15, 1999.
SB 72–583, Revision 2, dated July 15, 1991.	.....	.....	70–32–17, TR 70–39, dated December 15, 1998.	70–32–18, TR 70–40, dated December 15, 1998.
SB 72–583, Revision 3, dated July 24, 1991.	.....	.....	70–32–17, Revision 76, dated May 15, 1999.	70–32–18, Revision 76, dated May 15, 1999.
SB 72–583, Revision 4, dated September 15, 1993.	.....	.....	70–32–17, TR 70–47, dated October 28, 1999.	70–32–18, TR 70–48, dated October 28, 1999.
SB 72–583, Revision 5, dated December 22, 1995.				
SB 72–678, Original, dated November 6, 1995.				
SB 72–678, Revision 1, dated July 29, 1996.				
ASB 72–A678, Revision 2, dated October 28, 1999.				
ASB 72–A678, Revision 3, dated November 12, 1999.				
ASB 72–A0678, Revision 4, dated June 6, 2001.				
ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002.				

(i) For spools with greater than 3,500 CSN on the effective date of this AD, inspect before further flight.

(ii) For spools with 3,500 or fewer CSN on the effective date of this AD, inspect at the first PPE after 1,000 CSN or before 3,500 CSN, whichever occurs earlier.

(2) For spools that have not been inspected using ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002, or an earlier revision of ASB CF6–80A S/B 72–A0691 or SB 72–0691, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS accumulated after the effective date of this AD.

(3) For spools that have not been inspected using ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002, or an earlier revision of ASB CF6–80A S/B 72–A0719, inspect the stage 3—5 dovetail slot bottom in accordance with the requirements of ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first HPCR exposure after 1,000 CSN, or

(iii) The next required inspection to ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002.

Repetitive Inspections

(4) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D and one from Column E, reinspect the hub and bore in accordance with the requirements of ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002; and the dovetail slot bottoms in accordance with the requirements of ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 3,500 CSN, or

(ii) From July 29, 2001 through January 27, 2003 before the cycle limits of Table 4, or

(iii) After January 27, 2003, before the cycle limits of Table 5.

Spool Disposition

(5) If inspection findings equal or exceed the reject limits established by ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002; or ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002; or ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002; replace spool before further flight.

Spool Reinstallation Limit

(6) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool P/N 9136M89G10 with serial numbers (SN's) MPOM0054, MPOM7090, MPOM8303, MPOM8304, MPOM9263, MPOM9264, MPON0054, MPON0071, MPON0072, MPON1643, MPON4251, or MPON4253, installed where the spool has 10,500 or more CSN.

CF6–80A 13-Inch Billet Spools

(f) For all other CF6 HPCR stage 3–9 spools,

P/N 9136M89G10, with SN's that are not listed in paragraph (e) of this AD, and P/N 9136M89G11, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect hub and bore in accordance with ASB CF6–80A 72–A0678, Revision 5, dated October 2, 2002 before further flight.

(2) If the spool has 7,000 or fewer CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect hub and bore in accordance with ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 5,000 CSN or

(iii) From July 29, 2001, through January 27, 2003 before 7,000 CSN, and after January 27, 2003, before 5,000 CSN.

(3) For spools that have not been inspected using ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002, or an earlier revision of ASB CF6–80A S/B 72–A0691 or SB 72–0691, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

(4) For spools that have not been inspected using ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002, or an earlier revision of ASB CF6–80A S/B 72–A0719, inspect the dovetail slot bottom in accordance with the requirements of ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

Repetitive Inspection

(5) For spools installed in CF6–80A1 and CF6–80A3 engines that were inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, reinspect hub and bore in accordance with alert ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 5,000 CSN, or

(ii) Each ESV with more than 2,000 CSLI and 5,000 CSN, or

(iii) Within 4,000 CSLI and more than 5,000 CSN.

(6) Spools installed in CF6–80A and CF6–80A2 engines previously inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, reinspect hub and bore in accordance with ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 5,000 CSN, or

(ii) Each ESV with more than 1,500 CSLI and 5,000 CSN, or

(iii) Within 4,000 CSLI and more than 5,000 CSN.

Spool Disposition

(7) If inspection findings equal or exceed the reject limits established by ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002; or ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002; or ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002; replace spool before further flight.

CF6–80A 9 and 10-Inch Billet Spools

(g) For CF6 HPCR stage 3–9 spools, P/N's 9136M89G20, 9136M89G21, 9136M89G22 and 9136M89G27, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002 before further flight.

(2) If the spool has 7,000 or fewer CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 3,000 CSN or

(iii) From July 29, 2001, through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 5,000 CSN.

(3) For spools that have not been inspected using ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002, or an earlier revision of ASB CF6–80A S/B 72–A0691, or SB 72–0691, inspect the web and hub–to–web transition areas in accordance with the requirements of ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

(4) For spools that have not been inspected using ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002, or an earlier revision of ASB CF6–80A S/B 72–A0719 inspect the dovetail slot bottom in accordance with the requirements of ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

Repetitive Inspection

(5) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, reinspect hub and bore in accordance with ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 5,000 CSN, or

(ii) From July 29, 2001 through January 27, 2003, before the cycle limits of Table 6.

(iii) After January 27, 2003, before the cycle limits of the following Table 8:

TABLE 8

CSN at last inspection	Repeat inspection by
(A) 1,500 or fewer CSN	5,000 CSN
(B) 1,501 to 5,000 CSN	3,500 CSLI
(C) 5,001 to 5,500 CSN	8,500 CSN
(D) 5,501 to 6,501 CSN	3,000 CSLI
(E) 6,501 to 7,000 CSN	9,500 CSN
(F) 7,001 to 8,000 CSN	2,500 CSLI
(G) 8,001 to 8,500 CSN	10,500 CSN
(H) 8,501 or more CSN	2,000 CSLI

Spool Disposition

(6) If inspection findings equal or exceed the reject limits established by ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002; or ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002; or ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002; replace spool before further flight.

Spool Reinstallation Limit

(7) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool, P/N's 9136M89G20, 9136M89G21, 9136M89G22, and 9136M89G27, installed where the spool has 10,500 or more CSN.

CF6–80A 8-Inch Billet 2-Piece Spools

(h) For CF6 HPCR stage 3–9 spool, P/N 9136M89G28, do the following:

(1) If the spool has not already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect hub and bore in accordance with the piece-part level inspection of ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(2) For spools that have not been inspected using ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002, or an earlier revision of ASB CF6–80A S/B 72–A0691, or SB 72–0691, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(3) For spools that have not been inspected using ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002, or an earlier revision of ASB CF6–80A S/B 72–A0719 inspect the stage 3—5 dovetail slot bottom in accordance with the requirements of ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

Spool Disposition

(4) If inspection findings equal or exceed the reject limits established by ASB CF6–80A S/B 72–A0678, Revision 5, dated October 2, 2002; or ASB CF6–80A S/B 72–A0691, Revision 5, dated October 2, 2002; or ASB CF6–80A S/B 72–A0719, Revision 5, dated October 2, 2002; replace spool before further flight.

CF6–80C2 13-Inch Billet Spools

(i) For CF6 HPCR stage 3–9 spool, P/N's 1781M52P01, 1854M95P02,1781M52P02, 1854M95P05 and 9380M28P05, do the following:

Initial Inspection

(1) If the spool has not already been inspected using one of the ASB's or SB's listed in Column A of the following Table 9; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect hub and bore in accordance with ASB CF6–80C2 S/B 72-A0812, Revision 4, dated October 2, 2002, and the following compliance times:

TABLE 9

CF6–80C2 SB No.	Procedures (70–32–XX) in standard practices manual GEK9250			
Column A	Column B	Column C	Column D	Column E
SB 72–418, Revision 2, May 14, 1991.	70–32–09, Revision 71, dated October 1, 1995.	70–32–10, Revision 71, dated October 1, 1995.	70–32–13, Temporary Revision (TR), 70–25, dated August 26, 1996.	70–32–14, TR 70–26, dated August 26, 1996.
SB 72–418, Revision 3, November 7, 1994.	70–32–09, Revision 72, dated November 15, 1996.	70–32–10, Revision 72, dated November 15, 1996.	70–32–13, Revision 72, dated November 15, 1996.	70–32–14, Revision 72, dated November 15, 1996.
SB 72–418, Revision 4, December 22, 1995.	70–32–09, Revision 74, dated May 1, 1998.	70–32–10, Revision 74, dated May 1, 1998.	70–32–13, Revision 73, dated November 1, 1997.	70–32–14, Revision 73, dated November 1, 1997.
SB 72–758, Original, dated November 7, 1994.	.....	70–32–10, Revision 75, dated December 15, 1998.	70–32–13, Revision 75, dated December 15, 1998.	70–32–14, Revision 75, dated December 15, 1998.
SB 72–758, Revision 1, dated December 22, 1995.	.....	.....	70–32–13, TR 70–41, dated February 10, 1999.	70–32–14, TR 70–42, dated February 10, 1999.
SB 72–812, Original, dated November 6, 1995.	.....	.....	70–32–13, Revision 76, dated May 15, 1999.	70–32–14, Revision 76, dated May 15, 1999.
SB 72–812, Revision 1, dated january 30, 1998.	.....	.....	70–32–17, TR70–39, dated December 15, 1998.	70–322–18, TR 70–40, dated December 15, 1998.
ASB 72–A0812, Revision 2, dated October 28, 1999.	.....	.....	70–32–17, Revision 76, dated May 15, 1999.	70–32–18, Revision 76, dated May 15, 1999.
ASB 72–A0812, Revision 3, dated June 6, 2001.	.....	.....	70–32–17, TR 70–47, dated October 28, 1999.	70–32–18, TR 70–48, October 28, 1999.
ASB CF6–80C2 S/B 72–A0812, Revision 4, dated October 2, 2002..				

(i) For spools with greater than 3,500 CSN on the effective date of this AD, inspect before further flight.

(ii) For spools with 3,500 or fewer CSN on the effective date of this AD, inspect at the first PPE after 1,000 CSN or before 3,500 CSN, whichever occurs earlier.

(2) For spools that have not been inspected using ASB CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002, or an earlier revision of ASB 72–A0848 or SB 72–0848, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1000 CSN, or

(ii) The next required inspection to ASB CF6–80C2 S/B 72–A0812, Revision 4, dated October 2, 2002, or

(iii) From July 29, 2001 through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 3,500 CSN.

(3) For spools that have not been inspected using ASB CF6–80C2 S/B 72–A0934, Revision 4, dated October 2, 2002, or an earlier revision of ASB 72–A0934, inspect the stage 3–5 dovetail slot bottom in accordance with the requirements of ASB CF6–80C2 S/B 72–A0934, Revision 4, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first HPCR exposure after 1,000 CSN, or

(iii) The next required inspection to ASB CF6–80C2 S/B 72–A0812, Revision 4, dated October 2, 2002.

Repetitive Inspection

(4) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 9; OR a

combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, reinspect the hub and bore in accordance with ASB 72–A812, Revision 4, dated October 2, 2002; the web and hub-to-web transition areas in accordance with ASB CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002; and the stage 3–5 dovetail slot bottoms in accordance with ASB CF6–80C2 S/B 72–A0934, Revision 4, dated October 2, 2002, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 3,500 CSN, or

(ii) From July 29, 2001, through January 27, 2003, before the cycle limits of Table 4.

(iii) After January 27, 2003, before the cycle limits of Table 5.

Spool Disposition

(5) If inspection findings equal or exceed the reject limits established by ASB CF6–80C2 S/B 72–A0812, Revision 4, dated October 2, 2002, or ASB CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002, or ASB CF6–80C2 S/B 72–A0934, Revision 4, dated October 2, 2002; replace spool before further flight.

Spool Reinstallation Limit

(6) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool, P/N's 1781M52P01, 1781M52P02, 1854M95P02, 1854M95P05, and 9380M28P05, installed where the spool has 10,500 or more CSN.

CF6–80C2 9 and 10-Inch Billet Spools

(j) For CF6 HPCR stage 3–9 spool, P/Ns 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1781M53G01,1781M53G02, 1781M53G03, 1781M53G04, 1781M53G06, 1781M53G07, 1781M53G08, 1781M53G09, 1854M95P01, 1854M95P03, 1854M95P04, 1854M95P06, and 1854M95P07, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 9; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, or if the spool has not been inspected using ASB CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002, or an earlier revision of ASB 72–A0848 or SB 72–0848, inspect the hub and bore in accordance with ASB CF6–80C2 S/B 72–A0812, Revision 4, dated October 2, 2002; and the web and hub-to-web transition areas in accordance with ASB CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002, before further flight.

(2) If the spool has 7,000 or fewer CSN on the effective date of this AD, and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 9; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect the hub and bore in accordance with ASB CF6–80C2 S/B 72–A0812, Revision 4, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 3,000 CSN, or

(iii) From July 29, 2001, through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 3,500 CSN.

(3) If the spool has 7,000 or fewer CSN on the effective date of this AD, and has not already been inspected using ASB CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002, or an earlier revision of ASB 72–A0848 or SB CF6–80C2 72–0848, inspect the web and the web and hub-to-web transition areas in accordance with CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 3,000 CSN, or

(iii) From July 29, 2001, through July 28, 2003, before 7,000 CSN and after July 28, 2003, before 3,500 CSN.

(4) For spools that have not been inspected using ASB CF6–80C2 S/B 72–A0934, Revision 4, dated October 2, 2002, or an earlier revision of ASB 72–A0934, inspect the stage 3–5 dovetail slot bottom in accordance with the requirements of ASB CF6–80C2 S/B 72–A0934, Revision 4, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

Repetitive Inspection

(5) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 9; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, reinspect the hub and bore in accordance with the requirements of ASB CF6–80C2 S/B 72–A0812, Revision 4, dated October 2, 2002, and the web and hub-to-web transition areas in accordance with ASB CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002, at the earlier of:

(i) Each PPE with more than 1,000 CSLI and 3,500 CSN, or

(ii) From July 29, 2001, through January 27, 2003, before the cycle limits of Table 6, and after January 27, 2003, before the cycle limits of Table 5.

Spool Disposition

(6) If inspection findings equal or exceed the reject limits established by ASB CF6–80C2 S/B 72–A0812, Revision 4, dated Revision 4, dated October 2, 2002, or ASB CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002, or ASB CF6–80C2 S/B 72\A0934, Revision 4, dated October 2, 2002; replace spool before further flight.

Spool Reinstallation Limit

(7) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool, P/N's 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1781M53G01, 1781M53G02, 1781M53G03, 1781M53G04, 1781M53G06, 1781M53G07, 1781M53G08, 1781M53G09, 1854M95P01, 1854M95P03, 1854M95P04, 1854M95P06 and 1854M95P07, installed where the spool has 10,500 or more CSN.

CF6–80C2 8-Inch Billet 2-Piece Spools

(k) For CF6 HPCR stage 3–9 spool, P/N's 1333M66G10, 1781M53G05, 1781M53G010, and 1854M95P08, do the following:

(1) If the spool has not already been inspected using one of the ASB's or SB's listed in Column A of Table 9; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect hub and bore in accordance with the piece-part level inspection of ASB 72–A0812, Revision 4, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(2) For spools that have not been inspected using ASB 72–A0848, Revision 8, dated October 2, 2002, or an earlier revision of ASB 72–A0848, or SB 72–0848, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(3) For spools that have not been inspected using ASB CF6–80C2 S/B 72–A0934, Revision 3, dated October 2, 2002, or an earlier revision of ASB 72–A0934, inspect the stage 3–5 dovetail slot bottom in accordance with the requirements of ASB CF6–80C2 S/B 72–A0934, Revision 4, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

Spool Disposition

(4) If inspection findings equal or exceed the reject limits established by ASB CF6–80C2 S/B 72–A0812, Revision 4, dated October 2, 2002, or ASB CF6–80C2 S/B 72–A0848, Revision 8, dated October 2, 2002, or ASB CF6–80C2 S/B 72–A0934, Revision 4, dated October 2, 2002; replace spool before further flight.

CF6–80E1 9&10-Inch Billet Spools

(l) For CF6 HPCR stage 3–9 spool, P/N's 1669M22G01, 1669M22G03, 1782M22G01 and 1782M22G02, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN and has not already been inspected using one of the ASB's listed in Column A of the following Table 10; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, OR if the spool has not been inspected using ASB CF6–80E1 S/B 72–A0126, Revision 5, dated October 2, 2002, or an earlier revision of ASB 72–A0126, or SB 72–0126, inspect the hub and bore in accordance with ASB CF6–80E1 S/B 72–A0135, Revision 3, dated October 2, 2002; and the web and hub-to-web transition areas in accordance with ASB CF6–80E1 S/B 72–A0126, Revision 5, dated October 2, 2002, before further flight.

TABLE 10

CF6–80E1 SB No. Column A	Procedures (70–32–XX) in standard practices manual GEK9250			
	Column B	Column C	Column D	Column E
ASB 72–A0135, dated August 13, 1998.	70–32–09, Revision 71, dated October 1, 1995.	70–32–10, Revision 71, dated October 1, 1995.	70–32–13, Temporary Revision (TR), 70–25, dated August 26, 1996.	70–32–14, TR 70–26, dated August 26, 1996.
ASB 72–A0135, Revision 1, dated October 28, 1999.	70–32–09, Revision 71, dated November 15, 1996.	70–32–10, Revision 71, dated November 15, 1996.	70–32–13, Revision 72, dated November 15, 1996.	70–32–14, Revision 71, dated November 15, 1996.
ASB 72–A0135, Revision 2, dated June 6, 2001.	70–32–09, Revision 74, dated May 1, 1998.	70–32–10, Revision 74, dated May 1, 1998.	70–32–13, Revision 73, dated November 1, 1997.	70–32–14, Revision 73, dated November 1, 1997.
ASB CF6–80E1 S/B 72–A0135, Revision 3, dated October 2, 2002.	.....	70–32–10, Revision 75, dated December 15, 1998.	70–32–13, Revision 75, dated December 15, 1998. 70–32–13, TR 70–41, dated February 10, 1999. 70–31–13, Revision 76, dated May 15, 1999. 70–31–17, TR 70–39, dated December 15, 1998. 70–31–17, Revision 76, dated May 15, 1999. 70–31–17 TR 70–47, dated October 28, 1999.	70–32–14, Revision 75, dated December 15, 1998. 70–41, TR 70–42, dated February 10, 1999. 70–31–14, Revision 76, dated May 15, 1999. 70–31–18, TR 70–40, dated December 15, 1998. 70–31–18, Revision 76, dated May 15, 1999. 70–31–18 TR 70–48, dated October 28, 1999.

(2) If the spool has 7,000 or fewer CSN and has not already been inspected using one of the ASB's listed in Column A of Table 10; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, OR if the spool has not been inspected using ASB CF6–80E1 S/B 72–A0126, Revision 5, dated October 2, 2002, or an earlier revision of ASB 72–A0126, or SB 72–0126, inspect the hub and bore in accordance with ASB CF6–80E1 S/B 72–A0135, Revision 3, dated October 2, 2002; and the web and hub-to-web transition areas in accordance with ASB CF6–80E1 S/B 72–A0126, Revision 5, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 3,000 CSN, or

(iii) From July 29, 2001, through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 3,500 CSN.

(3) Spools not previously inspected using ASB CF6–80E1 S/B 72–A0137, Revision 4, dated October 2, 2002, or an earlier revision of ASB 72–0137, or SB 72–0137, inspect stage 3–5 dovetail slot bottoms in accordance with the requirements of ASB CF6–80E1 S/B 72–A0137, Revision 4, dated October 2, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first HPCR exposure after 1,000 CSN, or

(iii) The next required inspection to ASB CF6–80E1 S/B 72–A0135, Revision 3, dated October 2, 2002.

Repetitive Inspection

(4) For spools that have already been inspected using one of the ASB's listed in Column A of Table 10; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect the hub and bore in accordance with the requirements of ASB CF6–80E1 S/B 72–A0135, Revision 3, dated October 2, 2002, the web and hub-to-web transition areas in accordance with ASB CF6–80E1 S/B 72–A0126, Revision 5, dated October 2, 2002, and the stage 3–5 dovetail slot bottoms in accordance with ASB CF6–80E1 S/B 72–A0137, Revision 4, dated October 2, 2002, at the earlier of:

(i) Each PPE with more than 1,000 CSLI and 3,500 CSN, or

(ii) From July 29, 2001, through January 27, 2003, before the cycle limits of Table 6, and after January 27, 2003, before the cycle limits of Table 5.

Spool Disposition

(5) If inspection findings equal or exceed the reject limits established by ASB CF6–80E1 S/B 72–A0135, Revision 3, dated October 2, 2002; ASB CF6–80E1 S/B 72–A0126, Revision 5, dated October 2, 2002; and ASB CF6–80E1 S/B 72–A0137, Revision 4, dated October 2, 2002; replace spool before further flight.

Spool Reinstallation Limit

(6) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool, P/N's 1669M22G01, 1669M22G03, 1782M22G01, and 1782M22G02, installed where the spool has 10,500 or more CSN.

CF6–80E1 8-Inch Billet 2-Piece Spools

(m) For CF6 HPCR stage 3–9 spool, P/N 1782M22G04, do the following:

(1) If the spool has not already been inspected using one of the ASB's or SB's listed in Column A of the following Table 9; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect hub and bore in accordance with the piece-part level inspection of ASB CF6–80E1 S/B 72–A0135, Revision 3, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(2) For spools that have not been inspected using ASB CF6–80E1 S/B 72–A0126, Revision 5, dated October 2, 2002, or an earlier revision of ASB 72–A0126, or SB 72–0126, inspect the web and hub-to-web transition areas in accordance with ASB CF6–80E1 S/B 72–A0126, Revision 5, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(3) For spools that have not been inspected using ASB CF6–80E1 S/B 72–A0137, Revision 4, dated October 2, 2002, or an earlier revision of ASB 72–A0137, or SB 72–0137, inspect the stage 3–5 dovetail slot bottoms in accordance with ASB CF6–80E1 S/B 72–A0137, Revision 4, dated October 2, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

Spool Disposition

(4) If inspection findings equal or exceed the reject limits established by ASB CF6–80E1 S/B 72–A0135, Revision 3, dated October 2, 2002; ASB CF6–80E1 S/B 72–A0126, Revision 5, dated October 2, 2002; and ASB CF6–80E1 S/B 72–A0137, Revision 4, dated October 2, 2002; replace spool before further flight.

Reporting Requirements

(n) Within five calendar days of inspection, report the results of inspections that equal or exceed the reject criteria to: Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive park, Burlington, MA 01803–5299; telephone (781) 238-7147; fax (781) 238–7199. Reporting requirements have been approved by the Office of Management and

Budget and assigned OMB control number 2120–0056. Be sure to include the following information:

(1) Part Number.
(2) Serial Number.
(3) Spool CSN.
(4) Spool CSLI.
(5) Date and location where inspection was done.

Definitions

(o) For the purpose of this AD, the following definitions apply:

(1) A module level exposure is a separation of the fan module from the engine.

(2) An HPC rotor exposure is a HPC top or bottom case removal.

(3) A PPE is a disassembly and removal of the stage 3–9 spool from the HPCR structure, regardless of any blades, locking lugs, bolts or balance weights assembled to the spool.

(4) An ESV is the introduction of an engine into the shop where the separation of a major engine flange will occur after the effective date of this AD.

(5) The following maintenance actions, or any combination, are not considered ESV's for requiring repeat inspections:

(i) Introduction of an engine into a shop solely for removal of the compressor top or bottom case for airfoil maintenance or variable stator vane bushing replacement.

(ii) Introduction of an engine into a shop solely for removal or replacement of the Stage 1 Fan Disk.

(iii) Introduction of an engine into a shop solely for replacement of the Turbine Rear Frame.

(iv) Introduction of an engine into a shop solely for replacement of the Accessory and/or Transfer Gearboxes.

(v) Introduction of an engine into a shop solely for replacement of the Fan Forward Case.

Alternative Methods of Compliance

(p) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(q) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(r) The inspections must be done in accordance with the following GE Aircraft Engines alert service bulletins (ASB's):

Document No.	Pages	Revision	Date
ASB CF6–50 S/B 72–A1108 Total pages: 7.	All	5	October 2, 2002.
ASB CF6–50 S/B 72–A1131 Total pages: 43.	All	4	Do.
ASB CF6–50 S/B 72–A1157 Total pages: 38.	All	4	Do.
ASB CF6–80A S/B 72–A0678 Total pages: 7.	All	5	Do.
ASB CF6–80A S/B 72–A0691 Total pages: 43.	All	5	Do.
ASB CF6–80A S/B 72–A0719 Total pages: 38.	All	5	Do.
ASB CF6–80C2 S/B 72–A0812 Total pages: 6.	All	4	Do.
ASB CF6–80C2 S/B 72–A0848 Total pages: 43.	All	8	Do.
ASB CF6–80C2 S/B 72–A0934 Total pages: 38.	All	4	Do.
ASB CF6–80E1 S/B 72–A0126 Total pages: 44.	All	5	Do.
ASB CF6–80E1 S/B 72–A0135 Total pages: 6.	All	3	Do.
ASB CF6–80E1 S/B 72–A0137 Total pages: 38.	All	4	Do.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the

Effective Date

(s) This amendment becomes effective on January 23, 2003.

Issued in Burlington, Massachusetts, on December 11, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–31754 Filed 12–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–13–AD; Amendment 39–12946; AD 2002–23–02]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–8C1 Turbofan Engines, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to a previous correction to Airworthiness Directive (AD) 2002–23–

02 applicable to General Electric Company CF34–8C1 turbofan engines that was published in the **Federal Register** on December 11, 2002 (67 FR 76111). A typographical error was made in the AD number in line three of the Summary. This document corrects that number. In all other respects, the original document remains the same.

EFFECTIVE DATE: December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule correction AD, FR Doc. 02–31173 applicable to General Electric Company CF34–8C1 turbofan engines was published in the **Federal Register** on December 11, 2002 (67 FR 76111). The following correction is needed:

On page 76111, in the third column, in the third line of the Summary, remove the AD number ''(AD) 2002–23–09'' and add in its place ''(AD) 2002–23-02''.

Issued in Burlington, MA, on December 12, 2002.

Francis A. Favara,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–31999 Filed 12–18–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1260 and 1274

Implementation of Executive Order 13202, as Amended by E.O. 13208, in the NASA Grant and Cooperative Agreement Handbook

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule that revises Sections A, Grants and Cooperative Agreements, and D, Cooperative Agreements with Commercial Firms, of the NASA Grant and Cooperative Agreement Handbook to require that NASA grants and cooperative agreements follow the requirements of Executive Order 13202, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects''.

EFFECTIVE DATE: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546–0001, (202) 358–1645, e-mail: *celeste.dalton@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 13202 was signed on February 17, 2001, and amended on April 6, 2001 (E.O. 13208). The order provides that agencies may not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. It also permits agency heads to exempt a project from the requirements of the E.O. under special circumstances, but the exemption may not be related to a possible or an actual labor dispute. The amended E.O. also allows for exemption of a project governed by a project labor agreement in place as of February 17, 2001, which had a construction contract awarded as of February 17, 2001.

The E.O. applies to any construction project using Federal funds regardless of whether the award is expected to result in a contract, grant, or cooperative agreement. The Federal Acquisition Regulation (FAR) has already been revised to implement the E.O. relative to contracts. NASA is revising its Grant and Cooperative Agreement Handbook to implement the E.O. using language substantially the same as found in FAR section 36.202(d)), to ensure that E.O. 13202 requirements are consistently followed when funding construction projects under grants and cooperative agreements.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most NASA construction projects are accomplished by contracts subject to the FAR and very few through grants or cooperative agreements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Parts 1260 and 1274

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 14 CFR Parts 1260 and 1274 are amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: 42 U.S.C. 2374(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*) and OMB Circular A–110.

2. Amend section 1260.10 by adding paragraph (d) to read as follows:

§ 1260.10 Proposals.

* * * * *

(d)(1) In accordance with E.O. 13202 of February 17, 2001, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects'', as amended on April 6, 2001, the Government, or any construction manager acting on behalf of the Government, shall not—

(i) Require or prohibit recipients, potential recipients or subrecipients to enter into or adhere to agreements with one or more labor organizations (as defined in 42 U.S.C. 2000e(d)) on the same or other related construction projects; or

(ii) Otherwise discriminate against recipients, potential recipients or subrecipients for becoming, refusing to become, or remaining signatories or otherwise adhering to agreements with one or more organizations, on the same or other related construction projects.

(2) Nothing in this section prohibits the recipient, potential recipients or subrecipients from voluntarily entering into project labor agreements.

(3) The Assistant Administrator for Procurement may exempt a construction project from this policy if, as of February 17, 2001—

(i) The agency or a construction manager acting on behalf of the Government had issued or was party to bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions in paragraph (d)(1)of this section; and

(ii) One or more construction contracts (includes any contract awarded by the recipient) subject to such requirements or prohibitions had been awarded.

(4) The Assistant Administrator for Procurement may exempt a particular project, contract, or subcontract from this policy upon a finding that special circumstances require an exemption in order to avert an imminent threat to public health or safety, or to serve the national security. A finding of ''special circumstances'' may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of, or affiliated with, a labor organization.

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

3. The authority citation for part 1274 continues to read as follows:

Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451 *et seq.*

4. 1274.215 is added to read as follows:

§ 1274.215 Federal and federally funded construction projects.

(a) In accordance with E.O. 13202 of February 17, 2001, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects'', as amended on April 6, 2001, the Government, or any construction manager acting on behalf of the Government, shall not—

(1) Require or prohibit recipients, potential recipients or subrecipients to enter into or adhere to agreements with one or more labor organizations (as defined in 42 U.S.C. 2000e(d)) on the same or other related construction projects; or

(2) Otherwise discriminate against recipients, potential recipients or subrecipients for becoming, refusing to become, or remaining signatories or otherwise adhering to agreements with one or more organizations, on the same or other related construction projects.

(b) Nothing in this section prohibits the recipient, potential recipients or subrecipients from voluntarily entering into project labor agreements.

(c) The Assistant Administrator for Procurement may exempt a construction project from this policy if, as of February 17, 2001—

(1) The agency or a construction manager acting on behalf of the Government had issued or was party to bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions in paragraph (d)(1) of this section; and

(2) One or more construction contracts (includes any contract awarded by the recipient) subject to such requirements or prohibitions had been awarded.

(d) The Assistant Administrator for Procurement may exempt a particular project, contract, or subcontract from this policy upon a finding that special circumstances require an exemption in order to avert an imminent threat to public health or safety, or to serve the national security. A finding of ''special circumstances'' may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of, or affiliated with, a labor organization.

[FR Doc. 02–31682 Filed 12–18–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 320

[Docket No. 98N–0778]

RIN 0910–AC47

Bioavailability and Bioequivalence Requirements; Abbreviated Applications; Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on bioavailability and bioequivalence and on the content and format of an abbreviated application to reflect current FDA policy and to correct certain typographical and inadvertent errors. This action is intended to improve the accuracy and clarity of the regulations.

DATES: This rule is effective February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA regulations require persons submitting a new drug application (NDA) to provide bioavailability information (21 CFR 314.50(c)(2)(vi) and (d)(3)), and persons submitting an abbreviated new drug application (ANDA) to provide information pertaining to bioavailability and bioequivalence (§ 314.94(a)(7) (21 CFR 314.94(a)(7)).

FDA regulations in part 320 (21 CFR part 320) establish definitions and requirements for bioavailability and bioequivalence studies. FDA finalized the bioavailability and bioequivalence regulations on January 7, 1977 (42 FR 1624), and amended these regulations on April 28, 1992 (57 FR 17950). The 1992 amendments were designed to reflect statutory changes resulting from the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417).

In the **Federal Register** of November 19, 1998 (63 FR 64222), FDA proposed to revise its regulations on bioavailability and bioequivalence and the content and format of an ANDA to reflect current FDA policy and to correct certain typographical and inadvertent errors (the proposed rule). The publication of this final rule completes this rulemaking.

II. Description of the Final Rule

FDA is finalizing the proposed rule with the following revisions made in response to comments received on the proposal.

As proposed, the final rule changes the term ''enteric coated'' to ''delayed release'' and the term ''controlled release'' to ''extended release'' in § 320.22(c). To conform to this change, the final rule also amends §§ 320.1, 320.22(d)(2)(iv), 320.25(f), 320.27(a)(3)(iv), 320.27(b)(2), 320.28, and 320.31 by changing ''controlled release'' to ''extended release.'' To conform to the new terminology, the final rule also amends § 320.25(f) by changing ''noncontrolled release'' to ''nonextended release.''

The following new first sentence has been added to redesignated § 320.25(a)(2): ''An in vivo bioavailability study is generally done in a normal adult population under standardized conditions.'' This sentence is a necessary lead-in for the existing text that refers to situations in which

bioavailability studies may be conducted in patients.

The proposed rule would have revised § 320.26(b)(2)(i) to require a customary drug elimination period of five times, rather than at least three times, the half-life of the active drug ingredient or therapeutic moiety, or its active metabolite(s). In response to a comment pointing out that a drug elimination period of five half-lives may be impractically long for a drug with a long half-life, the agency has decided not to revise § 320.26(b)(2)(i).

The proposed rule would have revised § 320.27(d)(1) and (d)(2) to state that blood or urine samples should be taken on 3 or more consecutive days to establish that steady-state conditions have been achieved. Some comments stated that obtaining samples on consecutive days may be impractical and, for drugs with long half-lives, may be less sensitive to the establishment of steady state than data obtained over a longer period of time. The final rule requires that ''appropriate dosage administration and sampling should be carried out to document steady state.'' Specific advice about dosage administration and sampling may be obtained from the appropriate review division for the drug product.

III. Comments on the Proposed Rule

The agency received seven comments from pharmaceutical companies, pharmaceutical company trade associations, and a law firm.

A. Inactive Ingredients

Section 314.94(a)(9) establishes information requirements for the chemistry, manufacturing, and controls section of an abbreviated application. Section 314.94(a)(9)(ii) through (v) provides that an abbreviated application may have different inactive ingredients than the reference listed drug as long as the applicant identifies and characterizes the inactive ingredients in the proposed drug product and provides information demonstrating that the inactive ingredients do not affect the safety of the drug product. The agency proposed to amend this section to recognize the possibility that the use of different inactive ingredients can also affect a product's efficacy.

(Comment 1) We received several comments about the addition of the word ''efficacy.'' One comment said this change is unnecessary because demonstrating bioequivalence provides proof of efficacy. One comment interpreted the change as suggesting that FDA is departing from its position that bioequivalence shows that the generic product is as effective as its reference listed drug. This comment asked what additional proof of effectiveness FDA would require. One comment agreed with the proposed change and asked that it apply to pending ANDA's. This comment also stated that animal tests should not be used to demonstrate that different inactive ingredients do not affect safety or efficacy because the act prohibits the use of animal or clinical studies to establish that the drug is safe or effective. Another comment expressed concern that the need to show that a different inactive ingredient does not affect safety or efficacy makes it more difficult to get approval for a generic topical drug product because clinical trials must be conducted.

As stated in the proposed rule, by adding the word ''efficacy,'' the agency acknowledges the possibility that the use of different inactive ingredients can also affect a product's efficacy. FDA is not departing from its position that a generic product that demonstrates bioequivalence to the reference listed drug has shown that it is as effective as that reference listed drug.

The agency disagrees with the comment stating the animal tests should not be used in the process of assessing the safety or efficacy of inactive ingredients that differ from those in the reference listed drug. In the preamble to the proposed ANDA regulations, the agency suggested that data from animal studies might be used as limited confirmatory testing to support an ANDA suitability petition or an ANDA resulting from such a petition (54 FR 28872 at 28880, July 10, 1989). The preamble cited as an example the use of limited confirmatory testing to show that an approved change in an active ingredient did not have acute effects on the safety of the product. In similar fashion, animal studies may be useful and appropriate to assist FDA in evaluating the safety or the effect on efficacy of a changed inactive ingredient.

Section 314.127 (21 CFR 314.127) lists the reasons why FDA will refuse to approve an ANDA. The agency proposed to revise § 314.127(a)(8) to clarify that, consistent with current FDA policy, the applicant must show that different inactive ingredients would not affect a product's efficacy.

(Comment 2) One comment stated that the proposed change is consistent with FDA's current policy when applied to parenteral and ophthalmic dosage forms, but otherwise is inconsistent with current policy. Another comment said this change is unnecessary because demonstrating bioequivalence provides proof of efficacy.

As stated in the proposed rule, and in the response to the previous comment, the addition of the word ''efficacy'' simply clarifies the current FDA approach rather than effecting a substantive change.

B. Pharmaceutical Equivalents

Proposed § 320.1(c) revised the definition of ''pharmaceutical equivalents'' with regard to drug products that contain a reservoir that facilitates delivery or where residual volume may vary.

(Comment 3) One comment approved of the change. The final rule is unchanged from the proposed rule.

C. Manufacturing Site Change

Section 320.21(c)(1) provides that any person submitting a supplemental application to FDA must provide evidence or information regarding the product's bioavailability or bioequivalence if the supplemental application proposes ''[a] change in the manufacturing process, including a change in product formulation or dosage strength, beyond the variations provided for in the approved application.'' The agency proposed to amend this provision to include a change in the manufacturing site because such a change may affect the bioavailability or bioequivalence of the drug product because of equipment, personnel, or environmental changes.

(Comment 4) Several comments asserted that this proposed change is inconsistent with FDA's guidance ''Immediate Release Solid Oral Dosage Forms—Scale-Up and Post-Approval Changes: Chemistry, Manufacturing and Controls; In Vitro Dissolution Testing and In Vivo Bioequivalence Documentation'' (November 1995) (SUPAC–IR guidance), which does not specify a demonstration of bioequivalence for level 1–3 changes. The comments recommended that any change to the regulation be consistent with the SUPAC–IR guidance.

FDA believes that this change is consistent with the SUPAC–IR guidance. The SUPAC–IR guidance describes the levels of changes, recommended tests, and filing documentation that ensure continuing product quality and performance characteristics of an immediate release dosage form for specific postapproval changes. Depending on the level of change and the solubility and permeability characteristics of the active drug substance, the SUPAC–IR guidance recommends different levels of in vitro dissolution tests and/or in vivo bioequivalence studies. The addition of a change in the manufacturing site to

§ 320.21(c)(1) does not mean that the agency would require an in vivo demonstration of bioequivalence in the circumstances provided for in the SUPAC–IR guidance. For manufacturing site changes, dissolution testing alone is generally sufficient to ensure unchanged product quality and performance for an immediate release solid oral dosage form. FDA expects to continue to follow the SUPAC–IR guidance in implementing § 320.21(c)(1) as revised.

D. Delayed Release and Extended Release Terminology

The agency proposed to amend § 320.22(c) to change ''enteric coated'' to ''delayed release'' and ''controlled release'' to ''extended release.''

(Comment 5) One comment stated that these terms should also be replaced in § 320.22(d)(2)(iv).

FDA agrees with this comment. The final rule amends § 320.22(d)(2)(iv) by changing ''enteric coated'' to ''delayed release'' and ''controlled release'' to ''extended release.'' The final rule also amends §§ 320.1, 320.25(f), 320.27(a)(3)(iv), 320.27(b)(2), 320.28, and 320.31 by changing ''controlled release'' to ''extended release.'' To conform to these changes, the final rule also amends § 320.25(f) by changing ''noncontrolled release'' to ''nonextended release.''

E. Bioavailability Is Measured

Section 320.24 describes the types of evidence needed to establish bioavailability or bioequivalence. Instead of stating that bioavailability is demonstrated or established, the agency proposed to use the word ''measured.''

(Comment 6) One comment objected to this across-the-board change, asserting that it is not possible to get a quantitative measure of bioavailability from an acute pharmacological effect, a well-controlled clinical trial, or an in vitro test. The comment suggested that the words ''demonstrated'' or ''established'' be used in discussing these types of evidence.

FDA disagrees with this comment. Bioavailability is an observational measure that always results in a quantitative figure. Therefore, the final rule will remain as it was proposed.

F. Subjects for Bioavailability Studies

The agency proposed to remove § 320.25(a)(2) and redesignate § 320.25(a)(3) as § 320.25(a)(2). Current § 320.25(a)(2) provides in part that ''[a]n in vivo bioavailability study shall not be conducted in humans if an appropriate animal model exists and correlation of results in animals and humans has been demonstrated.''

(Comment 7) One comment proposed the following new first sentence for redesignated § 320.25(a)(2): ''An in vivo bioavailability study shall ordinarily be done in normal adults under standardized conditions.'' The comment stated that this sentence is a necessary lead-in for the existing text that refers to situations in which bioavailability studies may be conducted in patients.

FDA agrees with this comment and has included similar language in the final rule.

G. Drug Elimination Period

Proposed § 320.26(b)(2)(i) stated that the customary drug elimination period should be five times the half-life of the active drug ingredient or therapeutic moiety, or its active metabolite(s).

(Comment 8) FDA received several comments on this section. One comment approved of the change from the three half-lives in the current regulation, while another comment recommended four half-lives. One comment disagreed with using half-life multiples to establish the duration of sampling because the terminal half-life is a function of the study design and the sensitivity of the assay and, in many cases, represents the elimination of small amounts of drug from deep compartments. In those cases, a five half-life requirement may greatly overestimate the time needed to measure the area under the curve (AUC) extrapolated to infinity. The comment recommended that the rule state: ''The duration of blood sampling should be adequate to insure that the measured AUC represents at least 90% of AUC (infinity)'' (AUC_∞). Another comment, noting that many drugs exhibit multiexponential serum concentration-time profiles, asked FDA to substitute ''97% of the AUC_∞'' for ''five times the half-life.''

The agency recognizes that for a drug with a long half-life, a drug elimination period of five half-lives may be impractically long. FDA has concluded that a drug elimination period of three half-lives, which characterizes approximately 88 percent of the AUC_∞, is sufficent. Therefore, the final rule leaves § 320.26(b)(2)(i) unchanged.

(Comment 9) One comment suggested that § 320.26(b)(2) should use an alternative phrase such as ''washout period'' or ''time between dosings'' rather than the term ''drug elimination period'' because that term could be confused with the concept of drug elimination. FDA disagrees with this comment. The term ''drug elimination period'' has been used in § 320.26(b)(2) since the bioequivalence regulations were finalized in 1992, and the agency has not found that it causes confusion. Drug elimination is the metabolic process that eliminates the drug from the body. The drug elimination period is the time allowed for subjects to clear the first drug from the body before giving the second drug. The term ''drug elimination period'' is retained in the final rule.

H. Sampling to Establish Steady State

Proposed § 320.27(d)(1) and (d)(2) would have required sampling on 3 or more consecutive days to establish that steady-state conditions have been achieved whenever comparison of the test product and the reference material is to be based on blood concentration-time curves at steady state or urinary excretion-time curves at steady state.

(Comment 10) Several comments suggested deleting the word ''consecutive'' from § 320.27(d)(1). One comment stated that drugs with long half-lives accumulate slowly and the use of data from consecutive days for such drugs is less sensitive to the establishment of steady state than data obtained over a longer period of time. Another comment said that the 3–consecutive-day requirement is often not practical, particularly for urinary collection, and proposed dosing drugs for five to six half-lives or 1 week, whichever is longer, and then sampling blood or urine over one dosing interval.

One comment agreed that it is appropriate to obtain samples on 3 or more consecutive days. This comment stated that sometimes predose blood concentrations may be below the limit of quantitation; then it would not be possible to confirm attainment of steady state. The comment recommended that the predose collection time should be at a time when the blood drug concentrations are in the reliable range of quantitation of the assay and will be identical on all 3 days for all subjects.

Another comment stated that the proposed change to § 320.27(d)(1) reflects current practice, but that the requirement for consecutive-day data in § 320.27(d)(2) is unnecessarily restrictive. This comment proposed eliminating the word ''consecutive'' and instead saying ''to define adequately the predose blood concentration on 3 or more days (or doses) to establish that steady-state conditions are achieved.''

The agency has carefully considered these comments and has decided not to require that sampling be done on 3 or more consecutive days. Therefore, FDA has revised § 320.27(d)(1) and (d)(2) to state that ''* * * appropriate dosage administration and sampling should be carried out to document attainment of steady state.''

Current § 320.27(d)(1) requires that blood sampling be sufficient to define both the minimum (Cmin) and maximum (Cmax) blood concentrations on 2 or more consecutive days to establish that steady-state conditions have been achieved. The preamble to the proposed rule explained that one of the reasons the agency proposed to revise § 320.27(d)(1) is that FDA no longer uses Cmax values to determine steady-state conditions. The proposed rule also stated that, in some cases, the predose trough level may not be the observed Cmin value.

(Comment 11) One comment stated that the agency's proposal to revise § 320.27(d)(1) appeared contradictory because it would require that trough samples be measurable in order to establish steady state. The comment stated: ''The Agency should address these drugs (or drug products) which have a relatively short half-life (relative to the pharmacodynamic effect and dosing interval). Is it still acceptable to measure only trough values when the concentrations are less than the analytical lower limit of quantitation?''

As discussed in the response to comment 10, the agency is not revising § 320.27(d)(1) as set forth in the proposed rule. Instead, the final rule revises § 320.27(d)(1) to state that ''* * * appropriate dosage administration and sampling should be carried out to document attainment of steady state.'' This revision will permit the sampling schedule used to document steady state to be tailored to the characteristics of the drug being studied. Specific questions about the appropriateness and design of multiple-dose studies should be directed to the appropriate review division in the Office of New Drugs or to the Office of Generic Drugs.

I. Addition of Bioequivalence

The proposed rule added the words ''or bioequivalence'' after the word ''bioavailability'' in the section heading of § 320.27 and throughout the section.

(Comment 12) One comment pointed out that the preamble to the proposed rule did not discuss the addition of the words ''or bioequivalence'' to § 320.27(e)(3). The comment has caused the agency to reconsider its proposal to amend § 320.27 to apply to bioequivalence as well as bioavailability. Section 320.27 discusses circumstances in which multiple-dose studies may be needed. FDA's current scientific thinking is that single-dose pharmacokinetic studies are preferable to multiple-dose studies to demonstrate bioequivalence because they are generally more sensitive in assessing release of the drug substance from the drug product into the systemic circulation. Accordingly, the agency has decided not to add the words ''or bioequivalence'' to § 320.27.

J. Additional Definitions

Proposed § 320.29(a) added the words ''or bioequivalence'' after the word ''bioavailability'' to the discussion of the analytical method used in an in vivo study.

(Comment 13) One comment asked FDA to revise § 320.29(a) to include several definitions. The comment suggested that ''active'' metabolite should be defined because the concept is vague and many metabolites that are present in low concentrations may not contribute to the overall activity of the drug. In addition, the comment stated that FDA should define active metabolites with respect to their activity relative to the parent drug and relative concentration. This comment also asked FDA to define the ''sufficient sensitivity'' that is required to measure the active drug and/or metabolites. The comment said that it is reasonable to expect laboratories to provide a calibration range that provides a 32-fold range (5 half-lives) from the mean Cmax to the lower limit of quantitation, and this range is more than adequate to define more than 95 percent of the plasma AUC.

FDA declines to add definitions of these concepts to § 320.29(a). Ascertaining the active metabolite can be a complex matter that requires a case-by-case approach rather than a regulatory definition. In October 2000, the agency published a guidance entitled ''Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations'' that discusses moieties that should be measured in bioavailability and bioequivalence studies.

K. Miscellaneous Changes

The final rule replaces the period at the end of § 320.22(b)(3)(i) with a semicolon and the word ''and''.

The proposed rule added to § 320.22(b)(3)(i) the language ''a solution for aerosolization or nebulization, a nasal solution.'' To conform to this change, the final rule adds language to § 320.22(b)(3)(iii) to indicate that products intended to act locally such as a solution for aerosolization or nebulization or a nasal solution should not contain an inactive ingredient or other change in formulation from the drug product that is the subject of the approved full new drug application or abbreviated new drug application that may significantly affect systemic or local availability.

The proposed rule added the word ''active'' before the word ''metabolite(s)'' in § 320.27(b)(3)(i). To conform to this addition, the final rule amends § 320.29 to add the word ''active'' before the word ''metabolite(s).''

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) through (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. The final rule amends the bioavailability and bioequivalence regulations to reflect current FDA policy. Thus, the final rule is not a significant action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on a substantial number of small entities. The agency certifies that the final rule would not have a significant impact on a substantial number of small entities because the final rule merely amends the bioavailability and bioequivalence regulations to reflect current FDA practice. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule because the rule is not

expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule does not require information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Public Law 104–13).

VII. Executive Order 13132: Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 320

Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 314 and 320 are amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

2. Section 314.94 is amended in paragraph (a)(9)(ii) and the second sentence of paragraphs (a)(9)(iii) and (a)(9)(iv) by adding the phrase ''or efficacy'' after the word ''safety'' each time it appears, and by revising paragraph (a)(9)(v) to read as follows:

§ 314.94 Content and format of an abbreviated application.

* * * * *

(a) * * *

(9) * * *

(v) *Inactive ingredient changes permitted in drug products intended for topical use.* Generally, a drug product intended for topical use, solutions for aerosolization or nebulization, and nasal solutions shall contain the same inactive ingredients as the reference listed drug identified by the applicant under paragraph (a)(3) of this section. However, an abbreviated application may include different inactive ingredients provided that the applicant identifies and characterizes the differences and provides information demonstrating that the differences do not affect the safety or efficacy of the proposed drug product.

* * * * *

§ 314.127 [Amended]

3. Section 314.127 *Refusal to approve an abbreviated new drug application* is amended in paragraph (a)(8)(ii)(A) introductory text and in paragraphs (a)(8)(ii)(B) and (a)(8)(ii)(C) by adding the phrase ''or efficacy'' after the word ''safety'' each time it appears.

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

4. The authority citation for 21 CFR part 320 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 371.

5. Section 320.1 is amended in paragraph (e) by removing the word ''controlled'' and adding in its place the word ''extended'' and by revising paragraph (c) to read as follows:

§ 320.1 Definitions.

* * * * *

(c) *Pharmaceutical equivalents* means drug products in identical dosage forms that contain identical amounts of the identical active drug ingredient, i.e., the same salt or ester of the same therapeutic moiety, or, in the case of modified release dosage forms that require a reservoir or overage or such forms as prefilled syringes where residual volume may vary, that deliver identical amounts of the active drug ingredient over the identical dosing period; do not necessarily contain the same inactive ingredients; and meet the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times, and/or dissolution rates.

* * * * *

6. Section 320.21 is amended by:

a. Removing paragraph (d)(1);

b. Redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(1) and (d)(2), respectively;

c. Revising newly redesignated paragraphs (d)(2)(i) and (d)(2)(ii); and

d. Revising paragraphs (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), (e), and (f), paragraph (g) introductory text, and paragraphs (g)(2) and (h).

The revisions read as follows:

§ 320.21 Requirements for submission of in vivo bioavailability and bioequivalence data.

(a) * * *

(1) Evidence measuring the in vivo bioavailability of the drug product that is the subject of the application; or

(2) Information to permit FDA to waive the submission of evidence measuring in vivo bioavailability.

(b) * * *

(1) Evidence demonstrating that the drug product that is the subject of the abbreviated new drug application is bioequivalent to the reference listed drug (defined in § 314.3(b) of this chapter); or

(2) Information to show that the drug product is bioequivalent to the reference listed drug which would permit FDA to waive the submission of evidence demonstrating in vivo bioequivalence as provided in paragraph (f) of this section.

(c) * * *

(1) A change in the manufacturing site or a change in the manufacturing process, including a change in product formulation or dosage strength, beyond the variations provided for in the approved application.

* * * * *

(d) * * *

(2) * * *

(i) Evidence measuring the in vivo bioavailability and demonstrating the in vivo bioequivalence of the drug product that is the subject of the application; or

(ii) Information to permit FDA to waive measurement of in vivo bioavailability.

(e) Evidence measuring the in vivo bioavailability and demonstrating the in vivo bioequivalence of a drug product shall be obtained using one of the approaches for determining bioavailability set forth in § 320.24.

(f) Information to permit FDA to waive the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence shall meet the criteria set forth in § 320.22.

(g) Any person holding an approved full or abbreviated new drug application shall submit to FDA a supplemental application containing new evidence measuring the in vivo bioavailability or demonstrating the in vivo

bioequivalence of the drug product that is the subject of the application if notified by FDA that:

* * * * *

(2) There are data measuring significant intra-batch and batch-to-batch variability, e.g., plus or minus 25 percent, in the bioavailability of the drug product.

(h) The requirements of this section regarding the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence apply only to a full or abbreviated new drug application or a supplemental application for a finished dosage formulation.

7. Section 320.22 is amended by revising paragraph (a), the second sentence of paragraph (b) introductory text, paragraphs (b)(1)(ii), (b)(2)(ii), (b)(3)(i), (b)(3)(ii), (b)(3)(iii), and (c), paragraph (d) introductory text, paragraphs (d)(2)(i), (d)(2)(iv), and (d)(4)(i), and the first sentence of paragraph (e) to read as follows:

§ 320.22 Criteria for waiver of evidence of in vivo bioavailability or bioequivalence.

(a) Any person submitting a full or abbreviated new drug application, or a supplemental application proposing any of the changes set forth in § 320.21(c), may request FDA to waive the requirement for the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence of the drug product that is the subject of the application. An applicant shall submit a request for waiver with the application. Except as provided in paragraph (f) of this section, FDA shall waive the requirement for the submission of evidence of in vivo bioavailability or bioequivalence if the drug product meets any of the provisions of paragraphs (b), (c), (d), or (e) of this section.

(b) * * * FDA shall waive the requirement for the submission of evidence obtained in vivo measuring the bioavailability or demonstrating the bioequivalence of these drug products. * * *

(1) * * *

(ii) Contains the same active and inactive ingredients in the same concentration as a drug product that is the subject of an approved full new drug application or abbreviated new drug application.

(2) * * *

(ii) Contains an active ingredient in the same dosage form as a drug product that is the subject of an approved full new drug application or abbreviated new drug application.

(3) * * *

(i) Is a solution for application to the skin, an oral solution, elixir, syrup, tincture, a solution for aerosolization or nebulization, a nasal solution, or similar other solubilized form; and

(ii) Contains an active drug ingredient in the same concentration and dosage form as a drug product that is the subject of an approved full new drug application or abbreviated new drug application; and

(iii) Contains no inactive ingredient or other change in formulation from the drug product that is the subject of the approved full new drug application or abbreviated new drug application that may significantly affect absorption of the active drug ingredient or active moiety for products that are systemically absorbed, or that may significantly affect systemic or local availability for products intended to act locally.

(c) FDA shall waive the requirement for the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence of a solid oral dosage form (other than a delayed release or extended release dosage form) of a drug product determined to be effective for at least one indication in a Drug Efficacy Study Implementation notice or which is identical, related, or similar to such a drug product under § 310.6 of this chapter unless FDA has evaluated the drug product under the criteria set forth in § 320.33, included the drug product in the Approved Drug Products with Therapeutic Equivalence Evaluations List, and rated the drug product as having a known or potential bioequivalence problem. A drug product so rated reflects a determination by FDA that an in vivo bioequivalence study is required.

(d) For certain drug products, bioavailability may be measured or bioequivalence may be demonstrated by evidence obtained in vitro in lieu of in vivo data. FDA shall waive the requirement for the submission of evidence obtained in vivo measuring the bioavailability or demonstrating the bioequivalence of the drug product if the drug product meets one of the following criteria:

* * * * *

(2) * * *

(i) The bioavailability of this other drug product has been measured;

* * * * *

(iv) Paragraph (d) of this section does not apply to delayed release or extended release products.

* * * * *

(4) * * *

(i) The bioavailability of the other product has been measured; and

* * * * *

(e) FDA, for good cause, may waive a requirement for the submission of evidence of in vivo bioavailability or bioequivalence if waiver is compatible with the protection of the public health. * * *

* * * * *

8. Section 320.23 is amended by revising the section heading and the first sentence of paragraph (a)(1) to read as follows:

§ 320.23 Basis for measuring in vivo bioavailability or demonstrating bioequivalence.

(a)(1) The in vivo bioavailability of a drug product is measured if the product's rate and extent of absorption, as determined by comparison of measured parameters, e.g., concentration of the active drug ingredient in the blood, urinary excretion rates, or pharmacological effects, do not indicate a significant difference from the reference material's rate and extent of absorption. * * *

* * * * *

9. Section 320.24 is amended by:

a. Revising the section heading and the first, second, and last sentences of paragraph (a);

b. Removing paragraph (b)(1)(iii); and

c. Revising the first, second, and last sentences of paragraph (b)(4), paragraphs (b)(5) and (b)(6), and paragraph (c) introductory text.

The revisions read as follows:

§ 320.24 Types of evidence to measure bioavailability or establish bioequivalence.

(a) Bioavailability may be measured or bioequivalence may be demonstrated by several in vivo and in vitro methods. FDA may require in vivo or in vitro testing, or both, to measure the bioavailability of a drug product or establish the bioequivalence of specific drug products. * * * The method used must be capable of measuring bioavailability or establishing bioequivalence, as appropriate, for the product being tested.

(b) * * *

(4) Well-controlled clinical trials that establish the safety and effectiveness of the drug product, for purposes of measuring bioavailability, or appropriately designed comparative clinical trials, for purposes of demonstrating bioequivalence. This approach is the least accurate, sensitive, and reproducible of the general approaches for measuring bioavailability or demonstrating bioequivalence. * * * This approach may also be considered sufficiently

accurate for measuring bioavailability or demonstrating bioequivalence of dosage forms intended to deliver the active moiety locally, e.g., topical preparations for the skin, eye, and mucous membranes; oral dosage forms not intended to be absorbed, e.g., an antacid or radiopaque medium; and bronchodilators administered by inhalation if the onset and duration of pharmacological activity are defined.

(5) A currently available in vitro test acceptable to FDA (usually a dissolution rate test) that ensures human in vivo bioavailability.

(6) Any other approach deemed adequate by FDA to measure bioavailability or establish bioequivalence.

(c) FDA may, notwithstanding prior requirements for measuring bioavailability or establishing bioequivalence, require in vivo testing in humans of a product at any time if the agency has evidence that the product:

* * * * *

10. Section 320.25 is amended by:

a. Removing paragraph (a)(2);

b. Redesignating paragraph (a)(3) as paragraph (a)(2);

c. Revising newly redesignated paragraph (a)(2), paragraph (d)(1), paragraph (e)(1) introductory text, and paragraph (e)(1)(i);

d. Revising the heading of paragraph (f) to read ''Extended release formulations.'';

e. Removing from paragraph (f) the word ''controlled'' each time it appears and adding in its place the word ''extended''; and

f. Removing from paragraph (f)(iii) the word ''noncontrolled'' and adding in its place the word ''nonextended''.

The revisions read as follows:

§ 320.25 Guidelines for the conduct of an in vivo bioavailability study.

(a) * * *

(2) An in vivo bioavailability study is generally done in a normal adult population under standardized conditions. In some situations, an in vivo bioavailability study in humans may preferably and more properly be done in suitable patients. Critically ill patients shall not be included in an in vivo bioavailability study unless the attending physician determines that there is a potential benefit to the patient.

* * * * *

(d) *Previously unmarketed active drug ingredients or therapeutic moieties.* (1) An in vivo bioavailability study involving a drug product containing an active drug ingredient or therapeutic moiety that has not been approved for marketing can be used to measure the following pharmacokinetic data:

* * * * *

(e) *New formulations of active drug ingredients or therapeutic moieties approved for marketing.* (1) An in vivo bioavailability study involving a drug product that is a new dosage form, or a new salt or ester of an active drug ingredient or therapeutic moiety that has been approved for marketing can be used to:

(i) Measure the bioavailability of the new formulation, new dosage form, or new salt or ester relative to an appropriate reference material; and

* * * * *

11. Section 320.26 is amended by revising the section heading and paragraph (a)(1) to read as follows:

§ 320.26 Guidelines on the design of a single-dose in vivo bioavailability or bioequivalence study.

(a) *Basic principles.* (1) An in vivo bioavailability or bioequivalence study should be a single-dose comparison of the drug product to be tested and the appropriate reference material conducted in normal adults.

* * * * *

12. Section 320.27 is amended by:

a. Revising paragraphs (a)(3)(iv), (d)(1), and (d)(2);

b. Removing from paragraph (b)(2) the word ''controlled'' and adding in its place the word ''extended''; and

c. Adding in paragraph (b)(3)(i) the word ''active'' before the word ''metabolite(s),''.

The additions and revisions read as follows:

§ 320.27 Guidelines on the design of a multiple-dose in vivo bioavailability study.

(a) * * *

(3) * * *

(iv) The drug product is an extended release dosage form.

* * * * *

(d) *Collection of blood or urine samples.* (1) Whenever comparison of the test product and the reference material is to be based on blood concentration-time curves at steady state, appropriate dosage administration and sampling should be carried out to document attainment of steady state.

(2) Whenever comparison of the test product and the reference material is to be based on cumulative urinary excretion-time curves at steady state, appropriate dosage administration and sampling should be carried out to document attainment of steady state.

* * * * *

§ 320.28 [Amended]

13. Section 320.28 *Correlation of bioavailability with an acute pharmacological effect or clinical evidence* is amended by removing the word ''controlled'' and adding in its place the word ''extended''.

14. Section 320.29 is amended by revising the section heading and paragraph (a) and by adding the word ''active'' before the word ''metabolite(s)'' in paragraph (b) to read as follows:

§ 320.29 Analytical methods for an in vivo bioavailability or bioequivalence study.

(a) The analytical method used in an in vivo bioavailability or bioequivalence study to measure the concentration of the active drug ingredient or therapeutic moiety, or its active metabolite(s), in body fluids or excretory products, or the method used to measure an acute pharmacological effect shall be demonstrated to be accurate and of sufficient sensitivity to measure, with appropriate precision, the actual concentration of the active drug ingredient or therapeutic moiety, or its active metabolite(s), achieved in the body.

* * * * *

15. Section 320.30 is amended by revising paragraph (c) to read as follows:

§ 320.30 Inquiries regarding bioavailability and bioequivalence requirements and review of protocols by the Food and Drug Administration.

* * * * *

(c)(1) General inquiries relating to in vivo bioavailability requirements and methodology shall be submitted to the Food and Drug Administration, Center for Drug Evaluation and Research, Office of Clinical Pharmacology and Biopharmaceutics (HFD–850), 5600 Fishers Lane, Rockville, MD 20857.

(2) General inquiries relating to bioequivalence requirements and methodology shall be submitted to the Food and Drug Administration, Center for Drug Evaluation and Research, Division of Bioequivalence (HFD–650), 7500 Standish Pl., Rockville, MD 20855–2773.

§ 320.31 [Amended]

16. Section 320.31 *Applicability of requirements regarding an ''Investigational New Drug Application''* is amended in paragraph (b) introductory text by adding after the word ''bioavailability'' the phrase ''or bioequivalence'' and in paragraph (b)(3) by removing the word ''controlled'' and adding in its place the word ''extended''.

Dated: December 8, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–31996 Filed 12–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 99P–5589]

Medical Devices; Reclassification and Codification of the Absorbable Polydioxanone Surgical Suture

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to Ethicon, Inc., reclassifying the absorbable polydioxanone surgical (PDS) suture intended for use in soft tissue approximation, including use in pediatric cardiovascular tissue where growth is expected to occur and ophthalmic surgery, from class III (premarket approval) to class II (special controls). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA,'' which is immediately in effect as the special control for the PDS suture, but remains subject to public comment and possible future revision under the agency's good guidance practices. The agency is reclassifying this device into class II because new information supplied by the petitioner indicates that special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls. Accordingly, the order is being codified in the Code of Federal Regulations. Any firm submitting a premarket notification (510(k)) for a new PDS suture will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

DATES: This rule is effective January 21, 2003. The reclassification was effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT: Anthony D. Watson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

The 1976 amendments broadened the definition of ''device'' in section 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified into class III all transitional devices, i.e., those devices previously regulated as new drugs, including the absorbable PDS suture. Section 520(l)(2) of the act (21 U.S.C. 360j(l)(2)) provides that the manufacturer or importer of a device classified in class III under the transitional provisions may file a petition for reclassification of the device into class I or class II. Procedures for filing and review of classification petitions are set forth in § 860.136 (21 CFR 860.136).

II. Regulatory History of the Device

Under section 520(l)(2) of the act and § 860.136, on August 25, 1999, FDA filed a petition submitted by Ethicon, Inc., requesting reclassification of the absorbable PDS suture from class III to class II. Class II devices are those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act). FDA consulted with members of the General and Plastic Surgery Devices Panel (the Panel members) regarding reclassification of the absorbable PDS suture. The Panel members recommended that FDA reclassify the absorbable PDS suture for soft tissue approximation, including use in pediatric cardiovascular tissue where growth is expected to occur, and ophthalmic surgery, from class III to class II. The Panel members also recommended consensus standards and device-specific labeling as the special controls that could reasonably assure the safety and effectiveness of the device.

III. FDA's Conclusion

FDA considered the Panel members' recommendations that the generic type of device, the absorbable PDS suture for soft tissue approximation, be reclassified from class III to class II. After reviewing the data in the petition and after considering the Panel members' recommendations and the comments, FDA, based on the information set forth, issued an order to the petitioner on September 4, 2001, reclassifying the absorbable PDS suture, and substantially equivalent devices of this generic type, from class III to class II. Accordingly, as required under § 860.136(b)(6), FDA is announcing the reclassification of the generic absorbable PDS suture from class III (premarket approval) into class II (special controls). The special control capable of providing reasonable assurance of safety and effectiveness for this device is a guidance document entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA,'' which FDA is making available elsewhere in this issue of the **Federal Register**. The guidance document describes a means by which surgical suture devices may comply with the requirement of special controls for class II devices. Any firm submitting a premarket notification (510(k)) for a new PDS suture will need to address the issues covered in the special control guidance. However, the firm needs only to show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. The special control guidance document reframes the risks identified in the PDS reclassification order to better show how the mitigating measures recommended by the guidance are associated with each risk. The clinical sequelae of the risks identified in the order and of the risks identified in the guidance are identical. FDA notes that the class II special control guidance document incorporates consensus

standards and device-specific labeling. FDA is codifying the reclassification of the device by adding § 878.4840.

For the convenience of the readers, FDA is adding 21 CFR 878.1(e) to inform the readers where they may find guidance documents referenced in 21 CFR part 878.

IV. Electronic Access

Guidance documents are available from the Division of Small Manufacturers, International, and Consumer Assistance (DSMICA) (HFZ–220), Food and Drug Administration, Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850. To receive the guidance document via your fax machine, telephone the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch tone telephone. Press 1 to enter the system and enter the document number (1387) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. The Center for Devices and Radiological Health (CDRH) maintains a home page on the Internet at *http://www.fda.gov/cdrh* for easy access to information that may be downloaded to a personal computer. Updated on a regular basis, the CDRH Internet site includes device safety alerts; **Federal Register** reprints; information on premarket submissions, including lists of approved applications and manufacturers' addresses; small manufacturers' assistance; information on video conferencing and electronic submissions; Mammography Matters; and other medical device-oriented information. A search capability for all guidance documents may be found at *http://www.fda.gov/cdrh/guidance.html*.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II relieves all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). There was only one manufacturer of this device at the time FDA reclassified it. Subsequently, FDA has found another manufacturer's device to be substantially equivalent to the reclassified device. The special controls guidance document does not impose any new burdens on these or future manufacturers. It merely assures that, in the future, devices of this generic type will be at least as safe and effective as the presently marketed devices. These devices are already subject to premarket notification and labeling requirements. The guidance document merely advises manufacturers on appropriate means of complying with these requirements. Furthermore, this rule may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required. The information collections addressed in the special control guidance document identified by this rule have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120).

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 878.1 is amended by adding a paragraph (e) to read as follows:

§ 878.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh/guidance.html*.

3. Section 878.4840 is added to subpart E to read as follows:

§ 878.4840 Absorbable polydioxanone surgical suture.

(a) *Identification.* An absorbable polydioxanone surgical suture is an absorbable, flexible, sterile, monofilament thread prepared from polyester polymer poly (p-dioxanone) and is intended for use in soft tissue approximation, including pediatric cardiovascular tissue where growth is expected to occur, and ophthalmic surgery. It may be coated or uncoated, undyed or dyed, and with or without a standard needle attached.

(b) *Classification.* Class II (special controls). The special control for the device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

Dated: October 16, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–31993 Filed 12–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 21

RIN 1076–AD98

Arrangement with States, Territories, or Other Agencies for Relief of Distress and Social Welfare of Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is removing existing regulations on Arrangement with States, Territories, or Other Agencies for Relief of Distress and Social Welfare of Indians. The program governed by this rule is now administered under regulations in the Indian Self-Determination and Education Assistance Act. Eliminating this rule will remove any confusion regarding the process for providing certain social services to the tribes.

EFFECTIVE DATE: This action is effective January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Larry Blair, Chief, Human Services Division, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS–4660-MIB, Washington, DC 20240. Telephone No. (202) 208–2479.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9. The Secretary has redelegated this authority to the Assistant Secretary—Indian Affairs under part 209, Chapter 8.1, of the Departmental Manual.

Background

On March 26, 2002, at 67 FR 13732, the BIA published a proposed rule to remove 25 CFR part 21, Arrangement with States, Territories, or Other Agencies for Relief of Distress and Social Welfare of Indians. We received no comments in response to the proposed rule.

This part is no longer necessary because this program now falls under the regulations in 25 CFR part 900 and 25 CFR 273, which carry out the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, 88 Stat. 2203, 25 U.S.C. 450 *et seq.*, as amended). Therefore, we are removing this part to clarify that tribal governments have total responsibility for managing social service programs.

This rule has never been used by the Office of Tribal Services, and used only once by the Office of Indian Education Programs. The Office of Indian Education staff has ensured that their programs will not be negatively impacted by the removal of this rule.

Regulatory Planning and Review (Executive Order 12866)

This rule was reviewed by the Office of Management and Budget, and determined not to be a significant regulatory action under Executive Order 12866. This rule has not had an effect of $100 million or more on the economy, nor had it adversely or materially affected the economy, productivity, competition, jobs, the environment, public health or safety, of State, local, or tribal governments or communities. The removal of this rule will also not create any serious inconsistency or otherwise interfere with an action taken or planned by another agency. The removal of this rule removes the apparent inconsistency with the Self-Determination and Education Assistance Act, as amended. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or rights or obligations of their recipients. Part 21 deals with the negotiation, execution and planning of social service contracts yet, it has never been funded or used by the social services programs. This rule does not raise novel legal or policy issues because it has been replaced by a law more responsive to the needs of the tribes.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule involves the negotiation, execution and planning of social service contracts, between the Federal Government and State or local governments, and does not have an effect upon the regulation of small business, organizations or grant jurisdiction over small governments. State and local governments will not be negatively impacted with the elimination of this rule because it has never been funded. They also are free to apply for grants under the Johnson-O'Malley Act providing no tribe or tribal entities are interested in applying.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule provides guidance for social services contracting and has no effect on the costs or prices in local communities. This rule does not have significant adverse effect on competition, employment, investments, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. This rule does not affect local enterprises and has never been used for operation of social service programs under this part.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any State, local, or tribal government or private entities and is in compliance with the provisions of the Unfunded Mandates Act of 1995. This rule, if funded and used, would provide the funds needed in the contract to perform the services.

Takings (Executive Order 12630)

The Department has determined that this rule does not have significant ''takings'' implications, or pertain to ''taking'' of private property interests, nor does it affect private property.

This rule involves the negotiation, execution and planning of social service contracts, and does not deal with private property, or trusts. This rule does not affect property rights protected by the Constitution and does not pose a risk of compensable taking.

Federalism (Executive Order 12612)

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

This rule has been examined under the Paper Reduction Act of 1995. Information collection was necessary for 25 CFR part 21 to identify how contract funds were to be used, and to measure contractors' performance and plans for future performance. Since its inception, part 21 has never been used by the social service program, and thus the

information collections approved for contract funding or performances were allowed to expire, unused.

National Environment Policy Act

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Consultation and Coordination with Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 25 CFR Part 21

Indians, Indian-welfare contracts.

For the reasons stated in the preamble and under the authority of 25 U.S.C. 9, amend 25 CFR chapter I by removing part 21.

Dated: October 25, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–31984 Filed 12–18–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9002]

RIN 1545–AX56

Agent for Consolidated Group; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Friday, June 28, 2002 (67 FR 43538) regarding the agent for subsidiaries of an affiliated group that files a consolidated return.

DATES: This correction is effective June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Gerald B. Fleming, (202) 622–7770, orGeorge R. Johnson, (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 1502 and 6402(j) of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9002), that were the subject of FR Doc. 02–16399, is corrected as follows:

§ 1.1502–77T [Corrected]

1. On page 43544, column 3, line 8, the language ''year (or agent designated under'' is corrected to read ''year (or substitute agent designated under''.

§ 602.101 [Corrected]

2. On page 43545, column 1, the amendatory language for paragraph 12 and § 602.101(b) is corrected to read as follows:

12. Section 602.101(b) is amended by removing the entries''1.1502–77 . . . . . 1545–0123'' and ''1.1502–77T . . . . . 1545–1046'' and adding new entries for §§ 1.1502–77 and 1.1502–77A in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1502–77	1545–1699
1.1502–77A	1545–0123
	1545–1046
* * * * *	

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–31988 Filed 12–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9029]

RIN 1545–BA43

Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the information reporting requirements for qualified tuition and related expenses under section 6050S of the Internal Revenue Code, including rules prescribing when the required information returns must be filed on magnetic media. The final regulations reflect changes made to the law by the Taxpayer Relief Act of 1997 and the amendments made by the Internal Revenue Service Restructuring and Reform Act of 1998 and Public Law 107–131. These regulations provide guidance to eligible educational institutions that enroll any individual for any academic period. These regulations also provide guidance to insurers that make reimbursements or refunds of qualified tuition and related expenses.

DATES: *Effective Date:* These regulations are effective December 19, 2002.

Applicability Dates: For dates of applicability, see § 1.6050S–1(f) and § 301.6011–2(g)(3).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Tonya Christianson, (202) 622–4910; and concerning the magnetic media filing specifications, waivers for filing on magnetic media, and extensions of time, contact the IRS, Martinsburg Computing Center, (304) 263–8700 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1678. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control

number assigned by the Office of Management and Budget.

The estimated reporting burden for the reporting in these regulations is reflected on the burden for Form 1098–T.

Estimated total annual reporting burden for 2001 for Form 1098–T: 3,056,411 hours.

Estimated number of responses for 2001 for Form 1098–T as of November 22, 2002: 20,376,075.

Estimated average annual burden hours per response for 2001 for Form 1098–T: 9 minutes.

Comments concerning the accuracy of this burden and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the information reporting requirements for qualified tuition and related expenses under section 6050S of the Internal Revenue Code (Code) and amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to magnetic media reporting. The Taxpayer Relief Act of 1997 (Public Law 105–34 (111 Stat. 788) (TRA '97)) added section 6050S of the Code. Section 6050S was amended by the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206 (112 Stat. 685) (RRA '98)), and Public Law 107–131 (115 Stat. 2410). In general, section 6050S requires any eligible educational institution (institution) to file information returns and to furnish written information statements to assist taxpayers and the Internal Revenue Service (IRS) in determining the amount of qualified tuition and related expenses (qualified expenses) for which an education tax credit is allowable under section 25A (as well as other tax benefits for higher education expenses). See H.R. Conf. Rept. No. 599, 105th Cong., 2d Sess., pp. 319–320 (1998).

As provided by Public Law 107–131, for calendar years beginning after December 31, 2002, institutions may elect to report either the aggregate amount of payments received, or the aggregate amount billed, for qualified expenses during the calendar year with respect to individuals enrolled for any academic period. Institutions must report separately adjustments (*i.e.*, refunds of payments or reductions in charges) made during the calendar year to payments received, or amounts billed, for qualified expenses that were reported in a prior calendar year. In addition, institutions must report the aggregate amount of scholarships or grants received for an individual's costs of attendance that the institution administered and processed during the calendar year. Institutions must report separately adjustments (*i.e.*, refunds or reductions) made during the calendar year to scholarships that were reported in a prior calendar year.

In addition, section 6050S requires any person engaged in a trade or business of making payments to any individual under an insurance agreement as reimbursements or refunds of qualified expenses (an insurer) to file information returns and to furnish written information statements.

A notice of proposed rulemaking under section 6050S (REG–105316–98) was published in the **Federal Register** (65 FR 37728) on June 16, 2000 (the 2000 proposed regulations). The 2000 proposed regulations relating to the information reporting requirements for institutions and insurers were withdrawn and a new notice of proposed rulemaking (REG–161424–01) was published in the **Federal Register** (67 FR 20923) on April 29, 2002 (the 2002 proposed regulations). No request for a public hearing was received on the 2002 proposed regulations. The IRS received written and electronic comments responding to the 2002 notice of proposed rulemaking. After consideration of all the comments, the 2002 proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

1. Information Reporting Relating to Qualified Tuition and Related Expenses

A. Required Reporting and Exceptions to Reporting

(i) Reporting Based on Academic Year vs. Calendar Year

One commentator to the 2002 proposed regulations requested that institutions be allowed to report financial data based on an academic year, and not based on a calendar year. Section 6050S requires institutions to report on a calendar year in order to assist taxpayers in calculating the education tax credit that is allowable for qualified expenses paid during a calendar year. Therefore, the final regulations do not adopt this recommendation.

(ii) Exception for Noncredit Courses

The 2002 proposed regulations provide an exception to reporting for any student who is enrolled during the calendar year only in courses for which no academic credit is offered. Several commentators to the 2002 proposed regulations requested that if a student is enrolled both in courses for which academic credit is offered (*e.g.*, courses in a postsecondary degree program) and courses for which no academic credit is offered (*e.g.*, courses in a continuing education program), institutions should be required to report only the courses for which academic credit is offered. The commentators suggested that the exception to reporting should be based on the category of courses, not the category of students. The commentators explained that institutions maintain separate databases for credit courses and noncredit courses and that it would create a substantial hardship if institutions were required to report for both credit courses and noncredit courses. In response to these comments, and because under section 25A and the regulations thereunder a student enrolled in a postsecondary degree program is not eligible to claim a Hope Scholarship Credit (and may not be eligible to claim a Lifetime Learning Credit) for noncredit courses, the final regulations adopt this recommendation. Accordingly, the final regulations provide that institutions are not required to report with respect to courses for which no academic credit is offered by the institution, even if the student is enrolled in a degree program.

(iii) No Exception for Small Amounts of Qualified Tuition and Related Expenses

One commentator to the 2002 proposed regulations requested that the regulations provide an exception to reporting for qualified expenses of $100 or less. The limited exceptions to required reporting are based on the fact that certain categories of students may not be eligible to claim the education tax credit and that certain payments may not be taken into account in calculating the amounts paid for qualified expenses for which an education tax credit is allowable. An exception to reporting for small amounts of qualified expenses has no relationship to whether an education tax

credit is allowable for amounts paid for qualified expenses. Therefore, the final regulations do not adopt this recommendation.

(iv) Exception for Students Whose Qualified Expenses Are Covered by Formal Billing Arrangement

The 2002 proposed regulations provide an exception to reporting for any student whose qualified expenses are paid by the student's employer through a formal billing arrangement under which the employer's employees attend the institution, the institution bills only the employer, and the institution does not maintain a separate account for any employee/student. Several commentators to the 2002 proposed regulations requested that this exception be expanded to include formal billing arrangements between institutions and other third party payors, such as the Veterans' Administration, U.S. Armed Forces, and other governmental and private organizations.

Under section 25A and the regulations thereunder, a taxpayer cannot claim the education tax credit for educational expenses paid with amounts that are excludable from gross income. Educational expenses paid through a formal billing arrangement between an institution and a governmental entity, such as the Veterans' Administration, often are excludable from the gross income of the individual student. Therefore, the final regulations expand the exception to cover formal billing arrangements between an institution and a governmental entity under which the institution bills only the governmental entity and does not maintain a separate account with respect to any individual student. In addition, the final regulations authorize the Commissioner to designate additional types of formal billing arrangements for which no reporting will be required. It is anticipated that any additional formal billing arrangements designated by the Commissioner will be limited to situations in which the individual students generally would not be eligible to claim an education tax credit with respect to the payments made by the institutional third party payor.

(v) Family Educational Rights and Privacy Act and Optional Reporting

The U.S. Department of Education has previously determined that reporting under section 6050S does not violate the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g). Several commentators to the 2002 proposed regulations requested clarification as to whether an institution that chooses to report on all students under section 6050S, even if the regulations provide an exception to required reporting, would violate FERPA. After the 2002 proposed regulations were issued, the Treasury Department asked the Department of Education to consider whether its earlier determination would extend to an institution that chooses to report on students otherwise covered by an exception to required reporting. The Department of Education has recently determined that an institution will not violate FERPA if it chooses to report information on all students in accordance with section 6050S, even if the regulations provide an exception to required reporting.

B. Required Information for Institutions

(i) Reporting Amounts Billed in One Year That Relate to an Academic Period That Begins During the First Three Months of the Next Year

Several commentators to the 2002 proposed regulations requested that the final regulations eliminate the requirement that institutions indicate that amounts reported as billed in one calendar year relate to qualified expenses for an academic period that begins during the first three months of the next calendar year. The commentators explained that most institutions bill late in one calendar year for the qualified expenses that relate to an academic period that begins in the first three months of the next calendar year. The commentators questioned the usefulness of this information.

Under section 25A and the regulations thereunder, the education tax credit is allowable only for amounts actually paid during the calendar year for an academic period that begins during the same calendar year or during the first three months of the next calendar year. Therefore, there may be situations where an institution reports amounts billed for qualified expenses in one calendar year that relate to an academic period that begins during the first three months of the next calendar year, and the taxpayer pays the qualified expenses in the next calendar year. In this situation, the taxpayer and the IRS should be advised that the amounts reported as billed during a calendar year may not be amounts for which the taxpayer may claim the education tax credit for that year. Therefore, the final regulations do not adopt this recommendation.

(ii) Reporting Requirements for Increases to Charges for Qualified Expenses and Grants Reported for a Prior Calendar Year

One commentator requested clarification as to whether the 2002 proposed regulations purposely did not require separate reporting for increases to charges for qualified expenses and grants reported by the institution for a prior calendar year. The amendments to section 6050S by Public Law 107–131 require institutions to report the aggregate amount of charges for qualified expenses and the aggregate amount of grants administered and processed during the calendar year. These aggregate amounts would include any increases in charges for qualified expenses that relate to a prior year and any increases in grants that relate to a prior year. Therefore, no separate reporting is required for increases to charges for qualified expenses and grants that relate to a prior year.

(iii) Information Contact

The 2002 proposed regulations require institutions and insurers to include on the information statement furnished to the student the name, address, and phone number of the office or department within the institution or insurer that is the information contact. Several commentators requested that the regulations be revised to allow third party service providers that file information returns on behalf of the institutions or the insurers, as well as a third party call centers, to be designated as the information contact. Consistent with section 6050S(d)(1), the final regulations require institutions and insurers to include the name, address, and phone number of the information contact of the person required to file the information return. This provision does not preclude any institution or insurer that is required to file an information return from including, in addition to its own name, address, and phone number, the name, address, and phone number of a third party service provider.

C. Information Reporting Penalties

(i) Filing Information Returns With Missing TINs

Several commentators to the 2002 proposed regulations requested that institutions not be required to file information returns and to furnish information statements for students who refuse to provide their TINs. Information returns and information statements with missing TINs are useful to both the IRS and the taxpayer in verifying the amount of any allowable education tax credit (as well as other tax

benefits for higher education expenses). Therefore, the final regulations do not adopt this recommendation.

2. Requirement To File Information Returns on Magnetic Media

The final regulations amend the regulations under section 6011(e) to require institutions and insurers who are required to file 250 or more Forms 1098–T, ''Tuition Statement,'' to file on magnetic media.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. A final regulatory flexibility analysis has been prepared for the collection of information in this Treasury decision. This analysis is set forth in this preamble under the heading ''Final Regulatory Flexibility Analysis.'' Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Final Regulatory Flexibility Analysis

The collection of information contained in § 1.6050S–1 is needed to assist the IRS and taxpayers in determining the amount of any education tax credit allowable under section 25A (as well as other tax benefits for higher education expenses). The objectives of these final regulations are to provide uniform, practicable, and administrable rules under section 6050S. The types of small entities to which the regulations may apply are small eligible educational institutions (such as colleges and universities) and certain insurers who reimburse educational expenses.

There are no known Federal rules that duplicate, overlap, or conflict with these regulations. The regulations are considered to have the least economic impact on small entities of all alternatives considered.

Moreover, the regulations requiring filing Forms 1098–T on magnetic media impose no additional reporting or record keeping and only prescribe the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the statutory requirement that an institution or insurer is not required to file Forms 1098–T on magnetic media unless required to file at least 250 or more returns during the year. Finally, the economic impact caused by requiring Forms 1098–T on magnetic media should be minimal because most institutions' or insurers' operations are computerized. Even if their operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the existing regulations under section 6011(e) provide that the IRS may waive the magnetic media filing requirements on a showing of hardship. The waiver authority will be exercised so as not to unduly burden institutions and insurers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus.

Drafting Information

The principal author of the regulations is Tonya Christianson, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income tax, Reporting and record keeping requirements.

26 CFR Part 301

Employment tax, Estate tax, Excise tax, Gift tax, Income tax, Penalties, Reporting and record keeping requirements.

26 CFR Part 602

Reporting and recordkeeping.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAX

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6050S–1 also issued under section 26 U.S.C. 6050S(g).* * *

2. Section 1.6050S–0 is amended by revising the introductory language and adding new entries for § 1.6050S–1 to read as follows:

§ 1.6050S–0 Table of contents

This section lists captions contained in §§ 1.6050S–1, 1.6050S–2T, 1.6050S–3, and 1.6050S–4T.

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* * * * *

3. Section 1.6050S–1 is added to read as follows:

§ 1.6050S–1 Information reporting for qualified tuition and related expenses.

(a) *Information reporting requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, any eligible educational institution (as defined in section 25A(f)(2) and the regulations thereunder) (an institution) that enrolls (as determined under paragraph (d)(1) of this section) any individual for any academic period (as defined in the regulations under section 25A), and any person that is engaged in a trade or business of making payments under an insurance arrangement as reimbursements or refunds (or other similar amounts) of qualified tuition and related expenses (as defined in section 25A(f)(1) and the regulations thereunder) (an insurer) must—

(i) File an information return, as described in paragraph (b) of this section, with the Internal Revenue Service (IRS) with respect to each individual described in paragraph (b) of this section; and

(ii) Furnish a statement, as described in paragraph (c) of this section, to each individual described in paragraph (c) of this section.

(2) *Exceptions*—(i) *No reporting by institution or insurer for nonresident alien individuals.* The information reporting requirements of this section do not apply with respect to any individual who is a nonresident alien (as defined in section 7701(b) and § 301.7701(b)–3 of this chapter) during the calendar year, unless the individual requests the institution or insurer to report. If a nonresident alien individual requests an institution or insurer to report, the institution or insurer must comply with the requirements of this section for the calendar year with respect to which the request is made.

(ii) *No reporting by institutions for noncredit courses*—(A) *In general.* The information reporting requirements of this section do not apply with respect to any course for which no academic credit is offered by the institution.

(B) *Academic credit defined. Academic credit* means credit offered by an institution for the completion of course work leading toward a post-secondary degree, certificate, or other recognized post-secondary educational credential.

(C) *Example.* The following example illustrates the rules of this paragraph (a)(2)(ii):

Example. Student A, a medical doctor, takes a course at University X's medical school. Student A takes the course to fulfill State Y's licensing requirement that medical doctors attend continuing medical education courses each year. Student A is not enrolled in a degree program at University X and takes the medical course through University X's continuing professional education division. University X does not offer credit toward a post-secondary degree on an academic transcript for the completion of the course but gives Student A a certificate of attendance upon completion. Under this paragraph (a)(2)(ii), University X is not subject to the information reporting requirements of section 6050S and this section for the medical education course taken by Student A.

(iii) *No reporting by institutions for individuals whose qualified tuition and related expenses are waived or are paid with scholarships.* The information reporting requirements of this section do not apply with respect to any individual whose qualified tuition and related expenses are waived in their entirety or are paid entirely with scholarships.

(iv) *No reporting by institutions for individuals whose qualified tuition and related expenses are covered by a formal billing arrangement*— (A) *In general.* The information reporting requirements of this section do not apply with respect to any individual whose qualified tuition and related expenses are covered by a formal billing arrangement as defined in paragraph (a)(2)(iv)(B) of this section.

(B) *Formal billing arrangement defined.* A *formal billing arrangement* means—

(*1*) An arrangement in which the institution bills only an employer for education furnished by the institution to an individual who is the employer's employee and does not maintain a separate financial account for that individual;

(*2*) An arrangement in which the institution bills only a governmental entity for education furnished by the institution to an individual and does not maintain a separate financial account for that individual; or

(*3*) Any other similar arrangement in which the institution bills only an institutional third party for education furnished to an individual and does not maintain a separate financial account for that individual, but only if designated as a formal billing arrangement by the Commissioner in published guidance of general applicability or in guidance directed to participants in specific arrangements.

(b) *Requirement to file return*—(1) *In general.* Institutions may elect to report either the information described in paragraph (b)(2) of this section, or the information described in paragraph (b)(3) of this section. Once an institution elects to report under either paragraph (b)(2) or (3) of this section, the institution must use the same reporting method for all calendar years in which it is required to file returns, unless permission is granted to change reporting methods. Paragraph (b)(2) of this section requires institutions to report, among other information, the amount of payments received during the calendar year for qualified tuition and related expenses. Institutions must report separately adjustments made during the calendar year that relate to payments received for qualified tuition and related expenses that were reported for a prior calendar year. For purposes of paragraph (b)(2) of this section, an adjustment made to payments received means a reimbursement or refund. Paragraph (b)(3) requires institutions to report, among other information, the amounts billed during the calendar year for qualified tuition and related expenses. Institutions must report separately adjustments made during the calendar year that relate to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year. For purposes of paragraph (b)(3) of this section, an adjustment made to amounts billed means a reduction in charges. Insurers must report the information described in paragraph (b)(4) of this section.

(2) *Information reporting requirements for institutions that elect to report payments received for qualified tuition and related expenses*—(i) *In general.* Except as provided in paragraph (a)(2) of this section, an institution reporting payments received for qualified tuition and related expenses must file an information return with the IRS on Form 1098–T, ''Tuition Statement,'' with respect to each individual enrolled (as determined in paragraph (d)(1) of this section) for an academic period beginning during the calendar year or during a prior calendar year and for whom a transaction described in paragraphs (b)(2)(ii)(C), (E),

(F) or (G) of this section is made during the calendar year. An institution may use a substitute Form 1098–T if the substitute form complies with applicable revenue procedures relating to substitute forms (*see* § 601.601(d)(2) of this chapter).

(ii) *Information included on return.* An institution reporting payments received for qualified tuition and related expenses must include on Form 1098–T—

(A) The name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the institution;

(B) The name, address, and TIN of the individual who is, or has been, enrolled by the institution;

(C) The amount of payments of qualified tuition and related expenses that the institution received from any source with respect to the individual during the calendar year;

(D) An indication by the institution whether any payments received for qualified tuition and related expenses reported for the calendar year relate to an academic period that begins during the first three months of the next calendar year;

(E) The amount of any scholarships or grants for the payment of the individual's costs of attendance that the institution administered and processed during the calendar year;

(F) The amount of any reimbursements or refunds of qualified tuition and related expenses made during the calendar year with respect to the individual that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year;

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual's costs of attendance that were reported by the institution with respect to the individual for a prior calendar year;

(H) A statement or other indication showing whether the individual was enrolled for at least half of the normal full-time work load for the course of study the individual is pursuing for at least one academic period that begins during the calendar year (see section 25A and the regulations thereunder);

(I) A statement or other indication showing whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and

(J) Any other information required by Form 1098–T and its instructions.

(iii) *Reportable amount of payments received for qualified tuition and related expenses during calendar year determined.* The amount of payments received for qualified tuition and related expenses with respect to an individual during the calendar year that is reportable on Form 1098–T is determined by netting the amount of payments received (as defined in paragraph (b)(2)(v) of this section) for qualified tuition and related expenses during the calendar year against any reimbursements or refunds (as defined in paragraph (b)(2)(vi) of this section) made during the calendar year that relate to payments received for qualified tuition and related expenses during the same calendar year.

(iv) *Separate reporting of reimbursements or refunds of payments of qualified tuition and related expenses that were reported for a prior calendar year.* An institution must separately report on Form 1098–T any reimbursements or refunds (as defined in paragraph (b)(2)(vi) of this section) made during the current calendar year that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year. Such reimbursements or refunds shall not be netted against the payments received for qualified tuition and related expenses during the current calendar year.

(v) *Payments received for qualified tuition and related expenses determined.* For purposes of determining the amount of payments received for qualified tuition and related expenses during a calendar year, payments received with respect to an individual during the calendar year from any source (except for any scholarship or grant that, by its terms, must be applied to expenses other than qualified tuition and related expenses, such as room and board) are treated as payments of qualified tuition and related expenses up to the total amount billed by the institution for such expenses. For purposes of this section, a payment includes any positive account balance (such as any reimbursement or refund credited to an individual's account) that an institution applies toward current charges.

(vi) *Reimbursements or refunds of payments for qualified tuition and related expenses determined.* For purposes of determining the amount of reimbursements or refunds made of payments received for qualified tuition and related expenses, any reimbursement or refund made with respect to an individual during a calendar year (except for any refund of a scholarship or grant that, by its terms, was required to be applied to expenses other than qualified tuition and related expenses, such as room and board) is treated as a reimbursement or refund of payments for qualified tuition and related expenses up to the amount of any reduction in charges for such expenses. For purposes of this section, a reimbursement or refund includes amounts that an institution credits to an individual's account, as well as amounts disbursed to, or on behalf of, the individual.

(vii) *Examples.* The following examples illustrate the rules in this paragraph (b)(2):

Example 1. (i) In early August 2003, University X bills enrolled Student A $10,000 for qualified tuition and related expenses and $6,000 for room and board for the 2003 Fall semester. In late August 2003, Student A pays $11,000 to University X. In early September 2003, Student A drops to half-time enrollment for the 2003 Fall semester. In late September 2003, University X credits $5,000 to Student A's account, reflecting a $5,000 reduction in charges for qualified tuition and related expenses. In late September 2003, University X applies the $5,000 positive account balance toward current charges.

(ii) Under paragraph (b)(2)(v) of this section, the $11,000 payment is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the $5,000 credited to the student's account is treated as a reimbursement or refund of payments for qualified tuition and related expenses, because the current year charges for qualified tuition and related expenses were reduced by $5,000. Under paragraph (b)(2)(iii) of this section, University X is required to net the $10,000 payment received for qualified tuition and related expenses during 2003 against the $5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report $5,000 of payments received for qualified tuition and related expenses during 2003.

Example 2. (i) The facts are the same as in Example 1, except that Student A pays the full $16,000 in late August 2003. In late September 2003, University X reduces the tuition charges by $5,000 and issues a $5,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the $16,000 payment is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the $5,000 refund is treated as reimbursement or refund of payments for qualified tuition and related expenses, because the current year charges for qualified tuition and related expenses were reduced by $5,000. Under paragraph (b)(2)(iii) of this section, University X is required to net the $10,000 payment received for qualified tuition and related expenses during 2003 against the $5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report $5,000 of payments received for qualified tuition and related expenses during 2003.

Example 3. (i) The facts are the same as in *Example 1,* except that Student A is enrolled full-time, and, in early September 2003, Student A decides to live at home with her parents. In late September 2003, University X adjusts Student A's account to eliminate room and board charges and issues a $1,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the $11,000 payment is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the $1,000 refund is not treated as reimbursement or refund of payments for qualified tuition and related expenses, because there is no reduction in charges for qualified tuition and related expenses. Therefore, under paragraph (b)(2)(iii) of this section, University X is required to report $10,000 of payments received for qualified tuition and related expenses during 2003.

Example 4. (i) In early December 2003, College Y bills enrolled Student B $10,000 for qualified tuition and related expenses and $6,000 for room and board for the 2004 Spring semester. In late December 2003, Student B pays $16,000. In mid-January 2004, after the 2004 Spring semester classes begin, Student B drops to half-time enrollment. In mid-January 2004, College Y credits Student B's account with $5,000, reflecting a $5,000 reduction in charges for qualified tuition and related expenses, but does not issue a refund to Student B. In early August 2004, College Y bills Student B $10,000 for qualified tuition and related expenses $6,000 for room and board for the 2004 Fall semester. In early September 2004, College Y applies the $5,000 positive account balance toward Student B's $16,000 bill for the 2004 Fall semester. In late September 2004, Student B pays $6,000 towards the charges.

(ii) In the reporting for calendar year 2003, under paragraph (b)(2)(v) of this section, the $16,000 payment in December 2003 is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(iii) of this section, College Y is required to report $10,000 of payments received for qualified tuition and related expenses during 2003. In addition, College Y is required to indicate that the payments reported for 2003 relate to an academic period that begins during the first three months of the next calendar year.

(iii) In the reporting for calendar year 2004, under paragraph (b)(2)(vi) of this section, the $5,000 credited to Student B's account is treated as a reimbursement or refund of qualified tuition and related expenses, because the charges for qualified tuition and related expenses were reduced by $5,000. Under paragraph (b)(2)(iv) of this section, the $5,000 reimbursement or refund of qualified tuition and related expenses must be separately reported on Form 1098–T because it relates to payments of qualified tuition and related expenses reported by College Y for 2003. Under paragraph (b)(2)(v) of this section, the $5,000 positive account balance that is applied toward charges for the 2004 Fall semester is treated as a payment. Therefore, College Y received total payments of $11,000 during 2004 (the $5,000 credit plus the $6,000 payment). Under paragraph (b)(2)(v) of this section, the $11,000 of total payments are treated as a payment of qualified tuition and related expenses up to the $10,000 billed for such expenses. Therefore, for 2004, College Y is required to report $10,000 of payments received for qualified tuition and related expenses during 2004 and a $5,000 refund of payments of qualified tuition and related expenses reported for 2003.

(3) *Information reporting requirements for institutions that elect to report amounts billed for qualified tuition and related expenses*—(i) *In general.* Except as provided in paragraph (a)(2) of this section, an institution reporting amounts billed for qualified tuition and related expenses must file an information return on Form 1098–T with respect to each individual enrolled (as determined in paragraph (d)(1) of this section) for an academic period beginning during the calendar year or during a prior calendar year and for whom a transaction described in paragraphs (b)(3)(ii)(C), (E), (F) or (G) of this section is made during the calendar year. An institution may use a substitute Form 1098–T if the substitute form complies with applicable revenue procedures relating to substitute forms (*see* § 601.601(d)(2) of this chapter).

(ii) *Information included on return.* An institution reporting amounts billed for qualified tuition and related expenses must include on Form 1098–T—

(A) The name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the institution;

(B) The name, address, and TIN of the individual who is, or has been, enrolled by the institution;

(C) The amount billed for qualified tuition and related expenses with respect to the individual during the calendar year;

(D) An indication by the institution whether any amounts billed for qualified tuition and related expenses reported for the calendar year relate to an academic period that begins during the first three months of the next calendar year;

(E) The amount of any scholarships or grants for the payment of the individual's costs of attendance that the institution administered and processed during the calendar year;

(F) The amount of any reductions in charges made during the calendar year with respect to the individual that relate to amounts billed for qualified tuition and related expenses that were reported by the institution for a prior calendar year;

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual's costs of attendance that were reported by the institution with respect to the individual for a prior calendar year;

(H) A statement or other indication showing whether the individual was enrolled for at least half of the normal full-time work load for the course of study the individual is pursuing for at least one academic period that begins during the calendar year (see section 25A and the regulations thereunder);

(I) A statement or other indication showing whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and

(J) Any other information required by Form 1098–T and its instructions.

(iii) *Reportable amounts billed for qualified tuition and related expenses during calendar year determined.* The amount billed for qualified tuition and related expenses with respect to an individual during the calendar year that is reportable on Form 1098–T is determined by netting the amounts billed for qualified tuition and related expenses during the calendar year against any reductions in charges for qualified tuition and related expenses made during the calendar year that relate to amounts billed for qualified tuition and related expenses during the same calendar year.

(iv) *Separate reporting of reductions made to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year.* An institution must separately report on Form 1098–T any reductions in charges made during the current calendar year that relate to amounts billed for qualified tuition and related expenses that were reported by the institution for a prior calendar year. Such reductions shall not be netted against amounts billed for qualified tuition and related expenses during the current calendar year.

(v) *Examples.* The following examples illustrate the rules in this paragraph (b)(3):

Example 1. (i) In early August 2003, University X bills enrolled Student A $10,000 for qualified tuition and related expenses and $6,000 for room and board for the 2003 Fall semester. In late August 2003, Student A pays $11,000 to University X. In early September 2003, Student A drops to half-time enrollment for the 2003 Fall semester. In late September 2003, University X adjusts Student A's account and reduces the charges for qualified tuition and related expenses by $5,000 to reflect half-time enrollment. In late September 2003,

University X applies the $5,000 account balance toward current charges.

(ii) Under paragraph (b)(3)(iii) of this section, University X is required to net the $10,000 amount of qualified tuition and related expenses billed during 2003 against the $5,000 reduction in charges for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report $5,000 in amounts billed for qualified tuition and related expenses during 2003.

Example 2. (i) The facts are the same as in Example 1, except that, in addition, in early December 2003, College X bills Student A $10,000 for qualified tuition and related expenses and $6,000 for room and board for the 2004 Spring semester. In early January 2004, Student A pays $16,000. In mid-January 2004, after the 2004 Spring semester classes begin, Student A drops to half-time enrollment. In mid-January 2004, College X credits $5,000 to Student A's account, reflecting a $5,000 reduction in charges for qualified tuition and related expenses, but does not issue a refund check to Student A. In early August 2004, College X bills Student A $10,000 for qualified tuition and related expenses and $6,000 for room and board for the 2004 Fall semester. In early September 2004, College X applies the $5,000 positive account balance toward Student A's $16,000 bill for the 2004 Fall semester. In late September 2004, Student A pays $6,000 toward the charges.

(ii) In the reporting for calendar year 2003, under paragraph (b)(3)(iii) of this section, College X is required to report $15,000 amounts billed for qualified tuition and related expenses during 2003 ($5,000 for the 2003 Fall semester and $10,000 for the 2004 Spring semester). In addition, College X is required to indicate that some of the amounts billed for qualified tuition and related expenses reported for 2003 relate to an academic period that begins during the first three months of the next calendar year.

(iii) In the reporting for calendar year 2004, under paragraph (b)(3)(iv) of this section, the $5,000 reduction in charges for qualified tuition and related expenses must be separately reported on Form 1098–T because it relates to amounts billed for qualified tuition and related expenses that were reported by College X for 2003. Under paragraph (b)(3)(iii) of this section, College X is required to report $10,000 in amounts billed for qualified tuition and related expenses during 2004.

(4) *Requirements for insurers*—(i) *In general.* Except as otherwise provided in this section, an insurer must file an information return for each individual with respect to whom reimbursements or refunds of qualified tuition and related expenses are made during the calendar year on Form 1098–T. An insurer may use a substitute Form 1098–T if the substitute form complies with applicable revenue procedures relating to substitute forms (*see* § 601.601(d)(2) of this chapter).

(ii) *Information included on return.* An insurer must include on Form 1098–T—

(A) The name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)(41)) of the insurer;

(B) The name, address, and TIN of the individual with respect to whom reimbursements or refunds of qualified tuition and related expenses were made;

(C) The aggregate amount of reimbursements or refunds of qualified tuition and related expenses that the insurer made with respect to the individual during the calendar year; and

(D) Any other information required by Form 1098–T and its instructions.

(5) *Time and place for filing return*—(i) *In general.* Except as provided in paragraphs (b)(5)(ii) and (iii) of this section, Form 1098–T must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which payments were received, or amounts were billed, for qualified tuition or related expenses, or reimbursements, refunds, or reductions of such amounts were made. An institution or insurer must file Form 1098–T with the IRS according to the instructions to Form 1098–T.

(ii) *Return for nonresident alien individual.* In general, an institution or insurer is not required to file a return on behalf of a nonresident alien individual. However, if a nonresident alien individual requests an institution or insurer to report, the institution or insurer must file a return described in paragraph (b) of this section with the IRS on or before the date prescribed in paragraph (b)(5)(i) of this section, or on or before the thirtieth day after the request, whichever is later.

(iii) *Extensions of time.* The IRS may grant an institution or insurer an extension of time to file returns required in this section upon a showing of good cause. See General Instructions for Forms 1099 series, 1098 series, 5498 series, and W–2G, ''Certain Gambling Winnings,'' and applicable revenue procedures for rules relating to extensions of time to file (*see* § 601.601(d)(2) of this chapter).

(6) *Use of magnetic media. See* section 6011(e) and § 301.6011–2 of this chapter for rules relating to the requirement to file Forms 1098–T on magnetic media.

(c) *Requirement to furnish statement*—(1) *In general.* An institution or insurer must furnish a statement to each individual for whom it is required to file a Form 1098–T. The statement must include—

(i) The information required under paragraph (b) of this section;

(ii) A legend that identifies the statement as important tax information that is being furnished to the IRS;

(iii) Instructions that—

(A) State that the statement reports either total payments received by the institution for qualified tuition and related expenses during the calendar year, or total amounts billed by the institution for qualified tuition and related expenses during the calendar year, or the total reimbursements or refunds made by the insurer;

(B) State that, under section 25A and the regulations thereunder, the taxpayer may claim an education tax credit only with respect to qualified tuition and related expenses actually paid during the calendar year; and that the taxpayer may not be able to claim an education tax credit with respect to the entire amount of payments received, or amounts billed, for qualified tuition and related expenses reported for the calendar year;

(C) State that the amount of any scholarships or grants reported for the calendar year and other similar amounts not reported (because they are not administered and processed by the institution) may reduce the amount of any allowable education tax credit for the taxable year;

(D) State that the amount of any reimbursements or refunds of payments received, or reductions in charges, for qualified tuition and related expenses, or any reductions to the amount of scholarships or grants, reported by the institution with respect to the individual for a prior calendar year may affect the amount of any allowable education tax credit for the prior calendar year (and may result in an increase in tax liability for the year of the refund);

(E) State that the amount of any reimbursements or refunds of qualified tuition and related expenses reported by an insurer may reduce the amount of an allowable education tax credit for a taxable year (and may result in an increase in tax liability for the year of the refund);

(F) State that the taxpayer should refer to relevant IRS forms and publications, and should not refer to the institution or the insurer, for explanations relating to the eligibility requirements for, and calculation of, any allowable education tax credit; and

(G) Include the name, address, and phone number of the information contact of the institution or insurer that filed the Form 1098–T.

(2) *Time and manner for furnishing statement*—(i) *In general.* Except as provided in paragraphs (c)(2)(ii) and (iii) of this section, an institution or insurer must furnish the statement described in paragraph (c)(1) of this section to each individual for whom it is required to file a return, on or before January 31 of the

year following the calendar year in which payments were received, or amounts were billed, for qualified tuition and related expenses, or reimbursements, refunds, or reductions of such amounts were made. If mailed, the statement must be sent to the individual's permanent address, or the individual's temporary address if the institution or insurer does not know the individual's permanent address. If furnished electronically, the statement must be furnished in accordance with the applicable regulations.

(ii) *Statement to nonresident alien individual.* If an information return is filed for a nonresident alien individual, the institution or insurer must furnish a statement described in paragraph (c)(1) of this section to the individual in the manner prescribed in paragraph (c)(2)(i) of this section. The statement must be furnished on or before the later of the date prescribed in paragraph (c)(2)(i) of this section or the thirtieth day after the nonresident alien's request to report.

(iii) *Extensions of time.* The IRS may grant an institution or insurer an extension of time to furnish the statements required in this section upon a showing of good cause. *See* General Instructions for Forms 1099 series, 1098 series, 5498 series, and W–2G, ''Certain Gambling Winnings,'' and applicable revenue procedures for rules relating to extensions of time to furnish statements (*see* § 601.601(d)(2) of this chapter).

(3) Copy of Form 1098–T. An institution or insurer may satisfy the requirement of this paragraph (c) by furnishing either a copy of Form 1098–T and its instructions or another document that contains all of the information filed with the IRS and the information required by paragraph (c)(1) of this section if the document complies with applicable revenue procedures relating to substitute statements (*see* § 601.601(d)(2) of this chapter).

(d) *Special rules*—(1) *Enrollment determined.* An institution may determine its enrollment for each academic period under its own rules and policies for determining enrollment or as of any of the following dates—

(i) 30 days after the first day of the academic period;

(ii) A date during the academic period on which enrollment data must be collected for purposes of the Integrated Post Secondary Education Data System administered by the Department of Education; or

(iii) A date during the academic period on which the institution must report enrollment data to the State, the institution's governing body, or some other external governing body.

(2) *Payments of qualified tuition and related expenses received or collected by one or more persons*—(i) *In general.* Except as otherwise provided in paragraph (d)(2)(ii) of this section, if a person collects or receives payments of qualified tuition and related expenses on behalf of another person (*e.g.*, an institution), the person collecting or receiving payments must satisfy the requirements of paragraphs (b) and (c) of this section. In this case, those requirements do not apply to the transfer of the payments to the institution.

(ii) *Exception.* If the person collecting or receiving payments of qualified tuition and related expenses on behalf of another person (*e.g.*, an institution) does not possess the information needed to comply with the requirements of paragraphs (b) and (c) of this section, the other person must satisfy those requirements.

(3) *Governmental units.* An institution or insurer that is a governmental unit, or an agency or instrumentality of a governmental unit, is subject to the requirements of paragraphs (b) and (c) of this section and an appropriately designated officer or employee of the governmental entity must satisfy those requirements.

(e) *Penalty provisions*—(1) *Failure to file correct returns.* The section 6721 penalty may apply to an institution or insurer that fails to file information returns required by section 6050S and this section on or before the required filing date; that fails to include all of the required information on the return; or that includes incorrect information on the return. *See* section 6721, and the regulations thereunder, for rules relating to penalties for failure to file correct returns. *See* section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) *Failure to furnish correct information statements.* The section 6722 penalty may apply to an institution or insurer that fails to furnish statements required by section 6050S and this section on or before the prescribed date; that fails to include all the required information on the statement; or that includes incorrect information on the statement. *See* section 6722, and the regulations thereunder, for rules relating to penalties for failure to furnish correct statements. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) *Waiver of penalties for failures to include a correct TIN*—(i) *In general.* In the case of a failure to include a correct TIN on Form 1098-T or a related information statement, penalties may be waived if the failure is due to reasonable cause. Reasonable cause may be established if the failure arose from events beyond the institution's or insurer's control, such as a failure of the individual to furnish a correct TIN. However, the institution or insurer must establish that it acted in a responsible manner both before and after the failure.

(ii) *Acting in a responsible manner.* An institution or insurer must request the TIN of each individual for whom it is required to file a return if it does not already have a record of the individual's correct TIN. If the institution or insurer does not have a record of the individual's correct TIN, then it must solicit the TIN in the manner described in paragraph (e)(3)(iii) of this section on or before December 31 of each year during which it receives payments, or bills amounts, for qualified tuition and related expenses or makes reimbursements, refunds, or reductions of such amounts with respect to the individual. If an individual refuses to provide his or her TIN upon request, the institution or insurer must file the return and furnish the statement required by this section without the individual's TIN, but with all other required information. The specific solicitation requirements of paragraph (e)(3)(iii) of this section apply in lieu of the solicitation requirements of § 301.6724–1(e) and (f) of this chapter for the purpose of determining whether an institution or insurer acted in a responsible manner in attempting to obtain a correct TIN. An institution or insurer that complies with the requirements of this paragraph (e)(3) will be considered to have acted in a responsible manner within the meaning of § 301.6724–1(d) of this chapter with respect to any failure to include the correct TIN of an individual on a return or statement required by section 6050S and this section.

(iii) *Manner of soliciting TIN.* An institution or insurer must request the individual's TIN in writing and must clearly notify the individual that the law requires the individual to furnish a TIN so that it may be included on an information return filed by the institution or insurer. A request for a TIN made on Form W–9S, ''Request for Student's or Borrower's Taxpayer Identification Number and Certification,'' satisfies the requirements of this paragraph (e)(3)(iii). An institution or insurer may establish a system for individuals to submit Forms W–9S electronically as described in applicable forms and instructions. An institution or insurer may also develop

a separate form to request the individual's TIN or incorporate the request into other forms customarily used by the institution or insurer, such as admission or enrollment forms or financial aid applications.

(4) *Failure to furnish TIN.* The section 6723 penalty may apply to any individual who is required (but fails) to furnish his or her TIN to an institution or insurer. *See* section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(f) *Effective date.* The rules in this section apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.

PART 301—PROCEDURE AND ADMINISTRATION

4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

5. Section 301.6011–2 is amended as follows:

1. In paragraph (b)(1), first sentence, add the language ''1098–T,'' immediately after the language ''1098–E,''.

2. Revise paragraph (g)(3).

The revision reads as follows:

§ 301.6011–2 Required use of magnetic media.

* * * * *

(g) * * *

(3) This section applies to returns on Forms 1098-E, ''Student Loan Interest Statement,'' and 1098–T, ''Tuition Statement,'' filed after December 31, 2003.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

7. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current Control OMB No.
* * * * *	
1.6050S–1	1545–1678
* * * * *	

CFR part or section where identified and described	Current Control OMB No.
* * * * *	

David A. Mader,

Assistant Deputy Commissioner—Internal Revenue.

Approved: December 12, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 02–31915 Filed 12–18–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 270

[FRL–7424–2]

RIN 2050–AE79

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors-Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical correction.

SUMMARY: On September 30, 1999, EPA promulgated regulations to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes. EPA subsequently promulgated three rules that revised these regulations: a Direct Final Rule published on July 3, 2001, an Interim Standards Rule published on February 13, 2002, and a Final Amendments Rule published on February 14, 2002. In today's action, we are correcting technical errors in those regulations.

EFFECTIVE DATE: This rule is effective on December 19, 2002.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 4 pm, Eastern Standard Time. For more information about this technical correction, contact Michael Galbraith at 703–605–0567, or *galbraith.michael@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Are the Reasons and Basis for Today's Corrections?

The Agency has received comments from the regulated community and States requesting clarification of certain aspects of the September 30, 1999 Rule (64 FR 52828) as revised by three subsequent rules: the July 3, 2001 Direct Final Rule (66 FR 35087), the February 13, 2002 Interim Standards Rule (67 FR 6792), and the February 14, 2002 Final Amendments Rule (67 FR 6968). Today's technical corrections respond to these comments.

II. What Corrections Are We Making to the Standards?

A. Sources That Comply Early Are Not Required To Submit the NOC Within 90 Days of Completing the Comprehensive Performance Test

In the July 3, 2001 Direct Final Rule, we revised the 1999 rule to encourage early compliance with the regulations. See 66 FR at 35098. We indicated that, in developing the 1999 rule, we did not consider situations where sources would conduct performance testing prior to the compliance date. Sources may choose to test prior to the compliance date for reasons including: (1) To begin complying with the regulations prior to the compliance date; (2) to coordinate RCRA and CAA testing; or (3) to ensure compliance with the requirement to commence the test not later than six months after the compliance date. In the Direct Final Rule, we eliminated two impediments

to early compliance: (1) The requirement to stop burning hazardous waste for sources that fail the initial comprehensive performance test if the test is conducted prior to the compliance date; and (2) the requirement for the Documentation of Compliance for sources that submit the Notification of Compliance (NOC) prior to the compliance date.

We intended to eliminate a third impediment for sources that conduct the comprehensive performance test prior to the compliance date (since the purpose of the amendments was to remove impediments to early compliance): The requirement to submit the NOC within 90 days of completion of the performance test. The deadline for submitting the NOC is intended to require sources to document compliance with the emission standards as quickly as possible after the compliance date. The deadline is not necessary for sources that intend to comply early. We inadvertently included that amendment in a proposed Final Amendments Rule, also published on July 3, 2001 (66 FR 35126), rather than the Direct Final Rule. See proposed revisions to § 63.1207(j)(1)(i) and (j)(5), 66 FR at 35153. We also inadvertently did not provide preamble language discussing that regulatory change in the proposed amendments.

We are not amending the rule exactly as we proposed, however. We conclude that we need to revise the proposed regulatory language even though we did not receive adverse comment. Although we intended the waiver of the requirement (to submit the NOC within 90 days of completing the initial comprehensive performance test) to apply only to sources that comply early, the proposed regulatory language inadvertently did not restrict eligibility to early compliers. Accordingly, we have revised the amendment to require that a source that conducts the performance test prior to the compliance date, and that takes advantage of the waiver of the requirement to submit the NOC within 90 days of completing the test, must nonetheless submit the NOC by the compliance date or 90 days after completing the test, whichever is later. This provision ensures that sources using the waiver will begin complying with the emission standards using operating parameter limits documented by a performance test well before the regulatory deadline.[1]

We have apprised key stakeholders of our intent to correct the standard to include this amendment, and did not receive adverse comment. Accordingly, we are amending § 63.1207(j) by revising (j)(1)(i) and adding (j)(5), consistent with this preamble discussion.

B. Conforming Change to the Hydrochloric Acid and Chlorine Gas Emission Standard for New Lightweight Aggregate Kilns

In the Interim Standards Rule, we explained that we were revising the hydrochloric acid/chlorine gas standard for new lightweight aggregate kilns to be 600 ppmv. See 67 FR at 6797. We failed, however, to make the corresponding change to the regulation. Therefore, in today's action, we are revising the regulation at § 63.1205(b)(6) to include the correct standard of 600 ppmv for hydrochloric acid/chlorine gas.

C. Conforming Change To Delete the Minimum Power Requirement for Ionizing Wet Scrubbers

In the Interim Standards Rule, we deleted the limit on minimum total power to an ionizing wet scrubber required under § 63.1209(m)(1)(i)(D). The limit was intended to ensure compliance with the particulate matter standard. We determined, however, that a limit on total power may not ensure that the removal efficiency will be maintained for a multistage ionizing wet scrubber. We explained that until we evaluate other compliance alternatives and promulgate new requirements, sources and permit officials should use the alternative monitoring provisions of § 63.1209(g) to identify appropriate compliance assurance controls for ionizing wet scrubbers on a site-specific basis. See 67 FR at 6802. Although we deleted the limit for compliance with the particulate matter standard, we inadvertently did not make a conforming change to delete § 63.1209(o)(3)(vi), which also requires a limit on minimum total power to an ionizing wet scrubber to ensure compliance with the total chlorine emission standard.[2] To conform with our stated intent to delete the limit on minimum total power to an ionizing wet scrubber, we are today deleting § 63.1209(o)(3)(vi).

D. Conforming Change To Delete the Requirement To Include a Carbon Bed Testing Schedule in the Performance Test Plan

In the Interim Standards Rule, we deleted the requirement to establish a limit on the useful life of a carbon bed or bed segment and associated requirements to conduct testing subsequent to the comprehensive performance test to verify performance of the carbon bed. In lieu of those requirements, the revised rule requires you to monitor performance of the bed according to manufacturer's specifications to ensure the bed has not reached the end of its useful life. See 67 FR at 6803 and § 63.1209(k)(7)(i).

Although we deleted the requirement to confirm the useful life of a carbon bed by testing subsequent to the comprehensive performance test, we inadvertently did not make a conforming change to § 63.1207(f)(1)(xxi)(A). That provision requires you to include in the comprehensive performance test plan a schedule for conducting testing to verify bed performance. Accordingly, we are making that conforming change today by deleting § 63.1207(f)(1)(xxi)(A).

E. Conforming Changes to the Combustion System Leak Requirement

In the proposed Final Amendments Rule (66 FR at 35132, July 3, 2001), we proposed to make changes to §§ 63.1201(a), 63.1206(c)(5), and 63.1209(p) requiring sources to use a pressure monitor and recording frequency that is adequate to detect combustion system leak events. We also clarified that the intent of the combustion system leak requirement is to prevent fugitive emissions that originate from the combustion of hazardous waste, not fugitive emissions that originate from nonhazardous process streams. We also proposed regulatory language for these changes (see pages 35152 and 35154).

In the Final Amendment Rule, we reiterated that we were finalizing these changes. See 67 FR at 6973. We failed, however, to make the necessary regulatory changes to §§ 63.1201(a), 63.1206(c)(5), and 63.1209(p). We are, therefore, correcting these sections of the regulation by including the regulatory language that was set out in the proposed rule.

F. Conforming Changes to the Compliance Date Extension Requirements

Section 63.1206(a)(1) requires existing sources to comply with the Subpart EEE emission standards no later than

[1] Sources are required to: (1) Begin the initial comprehensive performance test not later than six months after the compliance date; (2) to complete testing within 60 days; and (3) to submit the NOC within 90 days of completing the testing. Upon postmark of the NOC, sources must begin complying with the operating parameter limits demonstrated during the performance test.

[2] Notwithstanding, we do not believe that power input to an ionizing wet scrubber is a primary control factor for chlorine emissions; rather, power input primarily controls metals and particulate matter.

September 30, 2003, unless the Administrator or State grants an extension of time under §§ 63.6(i) or 63.1213. The § 63.1213 compliance extension may be granted for a period of up to one year and is designed to allow for the installation of pollution prevention or waste minimization measures that significantly reduce the amount and/or toxicity of hazardous wastes in the feedstream to the combustor. Section 63.6(i)(4) in the Part 63 General Provisions provides for a similar extension should a source need additional time for the installation of controls without which the source would not be able to comply with the emission standards.

Both §§ 63.1213 and 63.6(i)(4) initially required you to submit your extension request in writing no later than 12 months before the compliance date. On April 5, 2002, we amended § 63.6(i)(4)(i)(B) to allow sources to submit their extension requests no later than 120 days (four months) prior to the compliance date. See 67 FR 16582. If the need for an extension arises later than 120 days prior to the compliance date, the amendment further allows sources to request an extension, but only if the need is due to circumstances beyond the reasonable control of the source that came to light after the extension deadline but before the actual compliance date. The amendment further provided that nonfrivolous extension requests would temporarily stay the applicability of the emission standards in question until the Administrator or State grants or denies the request.

The extension provisions of §§ 63.1213 and 63.6(i)(4) are similar in intent; both allow sources to request extensions to the compliance date for the installation of controls. As discussed in the preamble to the March 23, 2001 proposed amendments to the General Provisions (66 FR 16328), we believe that most sources will complete any necessary control installations well before the compliance date; however, we recognize that situations may arise prohibiting this. Sources acting in good faith may not be able to complete the installation, testing and implementation of additional controls due to circumstances or events not of their own making. Work stoppages at a control equipment supplier's factory, shortages of skilled design and construction engineers, and shortages of available technology are some of the examples of circumstances or events that may be beyond the influence of an individual source and that could impact that source's ability to properly install control equipment and measures. Sources that believed they would be able to meet the compliance date without an extension might be unduly penalized should any of these types of events occur within the 12 months prior to the compliance date. We do not believe that it is in the best interest of environmental protection to penalize sources that are actively improving upon their waste minimization and pollution prevention controls because of circumstances and events that are beyond their control occurring prior to the compliance date. Thus, we are making a conforming change to the § 63.1213 compliance date extension requirements to reflect the changes already put in place under § 63.6(i)(4) of the General Provisions.

We are also making a conforming change to the § 63.1213 applicability language to take into consideration the recently promulgated Subpart EEE Interim Standards Rule and our extension of the compliance date. Section 63.1213 requires that a source reasonably document if it cannot install the necessary control measures and comply with the emission standards and operating requirements within three years of the emission standards effective date. This ending phrase corresponded to the September 30, 1999 effective date of the original standards (*i.e.*, the date of publication) and to the September 30, 2002 original compliance date. On December 6, 2001, we extended the compliance date of those 1999 standards by one year, to September 30, 2003. We also promulgated negotiated Interim Standards on February 13, 2002 to temporarily replace the original 1999 standards. The Interim Standards were effective on the date of their promulgation. See 66 FR 63313 and 67 FR 6792. We did not, however, make a conforming change to § 63.1213(a) to address these changes. Therefore, in today's action, we are revising § 63.1213(a) to state that when a source submits a request for an extension, it must document that it cannot install the necessary control measures and comply with the standards and operating requirements by the compliance date.

G. Conforming Changes to the RCRA Permitting Requirements

In the proposed Final Amendments Rule, published on July 3, 2001, we proposed to clarify the applicability and introductory language in 40 CFR 270.19(e), 270.22, 270.62, and 270.66 regarding the reference to the Notification of Compliance (NOC). See 66 FR 35126. These sections currently state that once a source demonstrates compliance with the Subpart EEE standards by conducting a comprehensive performance test and submitting a NOC, the requirements of each section no longer apply (except with respect to certain startup, shutdown, and malfunction requirements). We proposed to specify that in order for the part 270 requirements to no longer apply, the NOC must actually document compliance with the Subpart EEE standards and requirements. While we did receive public comments on other proposed changes to the RCRA permitting requirements in the July 3, 2001 action (which we are not finalizing in today's action), we did not receive any comments on our proposal to specify in part 270 that the NOC must document compliance.

Under §§ 63.1207(j) and 63.1210, sources are required to postmark and submit to the Administrator a Notification of Compliance (NOC). This notification must document compliance or noncompliance with the Subpart EEE standards and requirements. As the regulatory language of part 270 currently states, the RCRA permitting requirements no longer apply only after the source demonstrates compliance. This can only be accomplished by conducting the comprehensive performance test and submitting a NOC that documents compliance. Obviously, the submittal of a NOC that does not document compliance should not constitute an opportunity to be relieved of the RCRA combustion permitting requirements. We should also note that the applicability language in 40 CFR 264.340(b), 265.340(b), and 266.100(b) specify that those sections no longer apply only after the source demonstrates compliance by conducting a comprehensive performance test and submitting a NOC that documents compliance. Therefore, in today's action we are finalizing the correction we proposed in the July 3, 2001 notice to add documenting compliance to the part 270 applicability language.

H. Conforming Change to the Limit on Waste Feedrate for Compliance With the D/F Emission Standard

Section 63.1209(k)(4) of the rule requires you to establish a limit on the maximum waste feedrate to ensure compliance with the dioxin/furan emission standard. Commenters have brought to our attention that preamble discussion explaining the rationale for this requirement refers to a limit on the maximum hazardous waste feedrate. (64 FR at 52937, September 30, 1999) As the preamble states, we intended the limit to apply to the hazardous waste feedrate, not the feedrate of hazardous and nonhazardous waste combined.

Accordingly, we are correcting § 63.1209(k)(4) to conform with the preamble discussion.

I. Conforming Change to the Limit on Maximum Ash Feedrate for Incinerators

Section 63.1209(m)(3) requires owners and operators of hazardous waste incinerators to establish a maximum ash feedrate limit as the average of the test run averages. The preamble discussion states that you must establish a maximum 12-hour rolling average feedrate limit based on operations during the comprehensive performance test. (64 FR at 52955, September 30, 1999.) However, we failed to specify the averaging period for this limit in the regulation. We are correcting § 63.1209(m)(3) to conform with the preamble language by adding a requirement to establish the maximum ash feedrate limit based on a 12-hour rolling average.

J. Conforming Change to the Sampling and Analysis Requirements

Section 63.1209(c)(2)(v) requires you to obtain a representative sample of each feedstream to be analyzed using sampling methods described in Appendix I, Part 26, or an equivalent method. This is an incorrect cite. The correct cite is Appendix IX, Part 266. Also, please note that Appendix IX simply refers you to sampling and analysis methods published in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846. Thus, the sampling method for any feedstream must be either that specified in SW–846, or an equivalent method.

III. Good Cause Exemption

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.[3] EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because it merely corrects errors in the September 30, 1999 Rule (64 FR 52828), as revised by three subsequent rules: the July 3, 2001 Direct Final Rule (66 FR 35087), the February 13, 2002 Interim Standards Rule (67 FR 6792), and the February 14, 2002 Final Amendments Rule (67 FR 6968). These final rules were subject to notice and comment, and the clarified regulatory language reflects the Agency's views already set out during the rulemaking and in past Agency statements (notably the applicable preambles). EPA also provided opportunity for further comment on most of these provisions by means of telephone calls and other communications with key stakeholders before issuing these amendments. Thus, EPA finds that further notice and opportunity for public participation in this action are unnecessary, and hence that good cause exists to issue the rule without further notice and further opportunities for comment.

IV. Rationale for Immediate Effective Date

Today's action does not create any new regulatory requirements; rather, it corrects errors in the September 30, 1999 Rule (64 FR 52828), as revised by three subsequent rules: The July 3, 2001 Direct Final Rule (66 FR 35087), the February 13, 2002 Interim Standards Rule (67 FR 6792), and the February 14, 2002 Final Amendments Rule (67 FR 6968). For this reason, we find that good cause exists under 5 U.S.C. 553(d)(3) to waive the requirement that regulations be published at least 30 days before they become effective.

V. Analytic and Regulatory Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the Agency has made a ''good cause'' finding (see section III above) that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This interpretive clarification and technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Our compliance with these statutes and Executive Orders for the underlying rules are discussed in the July 3, 2001, the February 13, 2002, and February 14, 2002 **Federal Register** notices.

The Congressional Review Act, (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States.

Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of December 19, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

[3] The good cause exemption in 5 U.S.C. section 553 (b) applies here, even though this is a rulemaking otherwise subject to the procedural standards set out in section 307 (d) of the Clean Air Act. See CAA section 307 (d) (1) (final sentence).

List of Subjects

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 12, 2002.

Marianne L. Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.1201 is amended by revising the definition of ''Instantaneous monitoring'' in paragraph (a) to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Instantaneous monitoring for combustion system leak control means detecting and recording pressure, without use of an averaging period, at a frequency adequate to detect combustion system leak events from hazardous waste combustion.

* * * * *

3. Section 63.1205 is amended by revising paragraph (b)(6) to read as follows:

§ 63.1205 What are the standards for hazardous waste burning lightweight aggregate kilns?

* * * * *

(b) * * *

(6) Hydrochloric acid and chlorine gas in excess of 600 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen; and

* * * * *

4. Section 63.1206 is amended by revising paragraph (c)(5)(ii) to read as follows:.

§ 63.1206 When and how must you comply with the standards and operating requirements?

* * * * *

(c) * * *

(5) * * *

(ii) You must specify in the performance test workplan and Notification of Compliance the method that will be used to control combustion system leaks. If you control combustion system leaks by maintaining the combustion zone pressure lower than ambient pressure using an instantaneous monitor, you must also specify in the performance test workplan and Notification of Compliance the monitoring and recording frequency of the pressure monitor, and specify how the monitoring approach will be integrated into the automatic waste feed cutoff system.

* * * * *

5. Section 63.1207 is amended by:

a. Revising paragraph (f)(1)(xxi).

b. Revising paragraph (j)(1)(i).

c. Adding paragraph (j)(5)

The revisions and addition read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(f) * * *

(1) * * *

(xxi) If your source is equipped with a carbon bed system, and you elect not to specify and use the brand and type of carbon used during the comprehensive performance test, you must include in the comprehensive performance test plan key parameters that affect carbon adsorption, and the operating limits you establish for those parameters based on the carbon used during the performance test, as required by § 63.1209(k)(7)(ii).

* * * * *

(j) * * *

(1) * * *

(i) Except as provided by paragraphs (j)(4) and (j)(5) of this section, within 90 days of completion of a comprehensive performance test, you must postmark a Notification of Compliance documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under § 63.1209.

* * * * *

(5) *Early compliance.* If you conduct the initial comprehensive performance test prior to the compliance date, you must postmark the Notification of Compliance within 90 days of completion of the performance test or by the compliance date, whichever is later.

* * * * *

6. Section 63.1209 is amended by:

a. Revising paragraph (c)(2)(v).

b. Revising paragraphs (k)(4) introductory text, and (k)(4)(i).

c. Revising paragraph (m)(3).

d. Removing paragraph (o)(3)(vi).

e. Revising paragraph (p).

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

* * * * *

(c) * * *

(2) * * *

(v) The sampling method which you will use to obtain a representative sample of each feedstream to be analyzed using sampling methods described in appendix IX, part 266 of this chapter, or an equivalent method; and

* * * * *

(k) * * *

(4) *Maximum hazardous waste feedrate.* (i) You must establish limits on the maximum pumpable and total (pumpable and nonpumpable) hazardous waste feedrate for each location where waste is fed.

* * * * *

(m) * * *

(3) *Maximum ash feedrate.* Owners and operators of hazardous waste incinerators must establish a maximum ash feedrate limit as a 12-hour rolling average based on the average of the test run averages.

* * * * *

(p) *Maximum combustion chamber pressure.* If you comply with the requirements for combustion system leaks under § 63.1206(c)(5) by maintaining the maximum combustion chamber zone pressure lower than ambient pressure to prevent combustion systems leaks from hazardous waste combustion, you must perform instantaneous monitoring of pressure and the automatic waste feed cutoff system must be engaged when negative pressure is not adequately maintained.

* * * * *

7. Section 63.1213 is amended by revising paragraphs (a) and (b)(1) introductory text to read as follows:

§ 63.1213 How can the compliance date be extended to install pollution prevention or waste minimization controls?

(a) *Applicability.* You may request from the Administrator or State with an approved Title V program an extension of the compliance date of up to one year. An extension may be granted if you can reasonably document that the

installation of pollution prevention or waste minimization measures will significantly reduce the amount and/or toxicity of hazardous wastes entering the feedstream(s) of the hazardous waste combustor(s), and that you could not install the necessary control measures and comply with the emission standards and operating requirements of this subpart by the compliance date.

(b) * * * (1) You must make your requests for an (up to) one-year extension in writing in accordance with § 63.6(i)(4)(B) and (C). The request must contain the following information:

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

8. The authority citation for part 270 continues to read as follows:

Authority : 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

9. Section 270.19 is amended by revising paragraph (e) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

(e) When an owner or operator demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

10. Section 270.22 is amended by revising the introductory text to read as follows:

§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

11. Section 270.62 is amended by revising the introductory text to read as follows:

§ 270.62 Hazardous waste incinerator permits.

When an owner or operator demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

12. Section 270.66 is amended by revising the introductory text to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

[FR Doc. 02–31903 Filed 12–18–02; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 50

RIN: 0991–AB21

HHS Exchange Visitor Program; Request for Waiver of the Two-Year Foreign Residence Requirement

AGENCY: Office of the Secretary, HHS.

ACTION: Interim final rule with opportunity for public comment.

SUMMARY: This interim final rule with comment period amends the regulations governing requests for the waiver of the two-year foreign residence requirement of the Health and Human Services (HHS) Exchange Visitor Program. These revisions permit institutions and health care facilities to submit to HHS requests for waiver of the two-year home-country physical presence requirement for physician Exchange Visitors to deliver health care services in underserved areas.

DATES: These interim final regulations are effective December 19, 2002. As discussed below, comments on the regulations are invited but must be received by February 3, 2003.

ADDRESSES: Written comments should be addressed to Dr. William R. Steiger, Office of Global Health Affairs, 200 Independence Ave., SW., Room 639–H, Washington, DC 20201. All comments received will be available for public inspection and copying at the above address, weekdays (Federal holidays excepted) between the hours of 9:00 a.m. and 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. William R. Steiger, Office of Global

Health Affairs, 200 Independence Ave., SW., Room 639–H, Washington, DC 20201. Telephone: 202–690–6174; Fax: 202–690–7127.

SUPPLEMENTARY INFORMATION: The U.S. Exchange Visitor Program, administered by the Department of State, seeks to promote peaceful relations and mutual understanding with other countries through educational and cultural exchange programs. Under one facet of this program, foreign national physicians may come to the United States to participate in graduate medical education programs under J–1 visas.

Upon completion of the graduate medical education program and expiration of the visa and prior to pursuing permanent residency, the Exchange Visitor physician must return to his or her country of nationality or last country of legal permanent residence for a minimum of two years to share the benefit of the knowledge and experience gained in the United States. Under limited and exceptional circumstances, an Exchange Visitor may obtain a waiver of the requirement to return home. An avenue through which a waiver may be obtained is by a request made, on the Exchange Visitor's behalf, by an interested United States Government Agency (IGA). Numerous Federal agencies have sought waivers as IGAs.

The vast majority of IGA requests for waivers involve international medical graduates who entered the United States to pursue graduate medical education or training. Historically, HHS has restricted its activity as an IGA to requesting waivers for researchers whose research could have national or international significance. In contrast, the Department of Agriculture and the Appalachian Regional Commission have been the most active IGAs seeking waivers for physicians to provide services in Health Professional Shortage Areas (HPSAs) or Medically Underserved Areas and Populations (MUA/Ps). On April 16, 2002, the Department of Agriculture announced it would process its pending waiver requests and then cease participation as an IGA.

Pursuant to section 332 of the Public Health Service Act, HHS designates areas, facilities or population groups as HPSAs if they meet the criteria specified in 42 CFR part 5. HPSA designations are separated into three categories: those for shortages of primary medical care, dental, and mental health professionals. HHS publishes lists of the designated areas annually in the **Federal Register**, and publishes updates to the list on the HHS web site periodically. Pursuant to Sec. 330(b)(3)–(6), HHS also designates areas and population groups as MUA/Ps based on established criteria that indicate a shortage of personal health services.

HHS is committed to increasing access to care for the nation's most medically underserved individuals. In accordance with this mission, HHS has decided to request waivers for physicians to provide primary care services in HPSAs and MUA/Ps and for psychiatrists to provide care in Mental Health HPSAs. In determining whether to request a waiver for an Exchange Visitor to deliver primary health care services, HHS will consider information from and coordinate with State Departments of Public Health (or the equivalent), other IGAs that request waivers, HHS programs such as the National Health Service Corps, and other relevant government agencies. This change in HHS's role requires amendment of the HHS regulations governing J–1 visa waiver requests.

The Secretary recognizes that the determination of need for health care services in specific geographic areas is affected by services provided by physicians holding nonimmigrant visas, as well as physicians assigned to these areas under HHS programs, such as the National Health Service Corps. On a related issue, during the first quarter of calendar year 2003, the Secretary intends to propose revisions to the regulations governing the designation of HPSAs and MUA/Ps.

HHS continues to endorse the philosophy that Exchange Visitors are committed to return to their country of nationality or last legal permanent residence home for at least two years after completing their program. Consistent with this philosophy, the regulations provide that the HHS Exchange Visitor Waiver Review Board may determine the appropriate numbers and geographic areas for waivers for the delivery of health care service. These determinations would be made based on data relating to the health care needs of the relevant areas.

The HHS eligibility criteria established under this rule are solely for the purpose of requesting HHS to act as an IGA and are consistent with the Department of State regulations governing such waiver requests. HHS eligibility requirement criteria for waiver requests are in addition to and independent of the existing waiver and visa criteria established by the Immigration and Naturalization Service (INS), the Department of State, and the Department of Labor. HHS stresses that its waiver regulations do not relieve alien physicians from their responsibility to comply with visa requirements on a timely basis to maintain lawful status. Nor should these HHS regulations be confused with criteria applicable to the waiver program implemented by state departments of health (the Conrad program).

Alien physicians are strongly encouraged to begin the waiver process as early as they possibly can while still in the residency training program. Early filing of the waiver request by the alien physician, coupled with timely processing of the request by the relevant government agencies, will facilitate the timely completion of the waiver process before the authorized J–1 admission expires, and the physician's subsequent application for change of nonimmigrant status from J–1 to H–1B.

HHS also notes that during the 12-month period following completion of the residency training program, an alien physician who has departed from the United States is still eligible to apply for an IGA waiver. He or she may pursue the waiver from abroad. If the waiver is granted, the alien physician may then procure an H–1B visa and seek admission to the United States to begin working in the location specified in the employment contract and approved by HHS.

The HHS criteria for waiver requests incorporate the requirements currently imposed by the Department of State regulations that govern waiver requests from IGAs based on the need for the delivery of health care services. In brief, the criteria for a waiver recommendation by HHS acting as an IGA are as follows:

1. Eligibility to apply for HHS waiver requests is limited to primary care physicians, and general psychiatrists who have completed their primary care or psychiatric residency training programs no more than 12 months before the date of commencement of employment under the contract described in the paragraph below. This 12-month eligibility limitation is to ensure that the physicians' primary care training is current and they are not engaged in subspecialty training. This HHS eligibility requirement relates only to eligibility for an HHS waiver recommendation and does not relieve physicians of the responsibility to maintain their lawful status. Primary care physicians are defined as: physicians practicing general internal medicine, pediatrics, family practice or obstetrics/gynecology and who are willing to work in a primary care HPSA or MUA/P; and general psychiatrists willing to work in a Mental Health HPSA.

2. The petitioning health care facility must establish that it has recruited actively and in good faith for U.S. physicians in the recent past, but has been unable to recruit a qualified United States physician.

3. The head of a petitioning health care facility must execute a statement to confirm that the facility is located in a specific, designated HPSA or MUA/P, and that it provides medical care to Medicaid and Medicare eligible patients and the uninsured indigent.

4. The Exchange Visitor must execute a statement that he or she does not have pending, and will not submit, other IGA waiver requests while HHS processes the waiver request.

5. The employment contract must require the Exchange Visitor to practice a specific primary care discipline for a minimum of three years, 40 hours per week in a specified HPSA or MUA/P. It may not include a non-compete clause that limits the Exchange Visitor's ability to continue to practice in any HHS-designated primary care or mental health HPSA or MUA/P after the period of obligation. The contract must be terminable only for cause and not terminable by mutual agreement until completion of the three-year commitment, except that the contract may be assigned to another eligible employer, subject to approval by HHS and consistent with all applicable INS and Department of Labor requirements.

6. Both the employer and the alien physician must submit information to HHS as the Secretary may reasonably require.

7. Both the employer and the alien physician must comply with all applicable Department of State, Department of Labor, INS, and HHS statutes, regulations and policies.

HHS notes that if an alien physician acquires H–1B nonimmigrant status following approval by the INS of a request for waiver, then he or she becomes subject not only to the terms and conditions of the waiver, but also the terms and conditions of the H–1B nonimmigrant status. Failure to comply with those conditions will make that physician subject to removal from the United States by the INS.

This rule also amends the HHS regulations by replacing references to the United States Information Agency (USIA) with the Department of State, following the consolidation of USIA and the Department of State as mandated by the Foreign Affairs Agencies Consolidation Act of 1998.

The amendments to 45 CFR Part 50 are as follows:

(1) Revise § 50.1 to replace the reference to ''the United States Information Agency'' with ''the Department of State'' to reflect the reorganization of the two agencies.

(2) In § 50.2 revise paragraph (b) to delete the ''s'' in ''Exchanges Visitor Program''; revise paragraph (c) to replace the reference to ''Office of International Affairs'' with the ''Office of Global Health Affairs''; remove the parenthetical examples in sentence three and add a new sentence at the end to authorize the Exchange Visitor Waiver Review Board to establish a workgroup to review requests for waivers for the delivery of health care services; and redesignate and move former paragraph (d) to new § 50.6(a) entitled ''Procedures for submission of application to HHS.''

(3) In § 50.3 redesignate and move former paragraphs (a)(1) through (3) to new § 50.4 entitled ''Waivers for research,'' and revise former § 50.3 to include policy for waivers for the delivery of health care services.

(4) Revise § 50.4 to redesignate, remove former paragraph (b) as unnecessary and move former paragraph (a) to make it paragraph (b) of new § 50.6. Retitle § 50.4 as ''Waivers for research'' and insert former paragraphs § 50.3 (a)(1) through (3) as new paragraphs (a) through (c). Revise new paragraph (a) to remove the sentence which reads ''The Board will not request a waiver when the application demonstrates that the exchange visitor is needed merely to provide services for a limited geographical area and/or to alleviate a local community or institutional manpower shortage, however serious.''

(5) Add a new § 50.5 entitled ''Waivers for the delivery of health care service'' to provide criteria for requests for waivers based on a need for the provision of health care service.

(6) Add new § 50.6 entitled ''Procedures for Submission of application to HHS'' and insert former paragraph § 50.2(d) as paragraph (a), and former paragraphs § 50.4(a) and (b) as paragraphs (b) and (c).

(7) Redesignate former § 50.5 as new § 50.7.

(8) Remove former § 50.6 as unnecessary.

(9) Add new § 50.8 entitled ''Compliance'' to note the enforcement authority of INS and the responsibility of the alien physician for compliance with the terms and conditions of both the applicable visa status and of the waiver.

Justification for Omitting Notice of Proposed Rulemaking

Notice and public comment and delayed effective date have been waived for these amendments because it has been found for good cause in accordance with 5 U.S.C. 553 that notice and comment are ''impracticable, unnecessary or contrary to the public interest.''

Since the mid-1990's, the Department of Agriculture placed more than 3,098 physicians in underserved areas in 48 states through its J–1 visa waiver program. While the Department of Agriculture will no longer be doing so, there remains a critical need for physicians in many parts of the United States that HHS is prepared to help meet by expanding its role in the J–1 visa waiver program and improving coordination of the placement of physicians in these areas. Any delay in implementation of these regulations would harm the medical needs of these vulnerable populations. Health care entities which will apply for exchange-visitor waivers have been unable to recruit adequate numbers of physicians to provide health services within their geographic areas. While the health care needs of underserved areas have decreased through the success of programs such as the National Health Service Corps and waivers requested by state public health departments, chronic shortages of physicians continue in certain geographic areas. Without Exchange Visitor physicians to help fill this gap, the health care needs of the populations in these areas remain unmet.

Accordingly, the Secretary has determined, in accordance with 5 U.S.C. 553 and HHS policy, that it would be unnecessary and contrary to the public interest to follow proposed rulemaking procedures in the issuance of these regulations or to delay their effective date. However, comments will be accepted at the above listed address for a period of 45 days following the publication of these regulations.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act (RFA of 1980), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of

alternatives of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department has determined that the resources required to implement the requirement in these regulations are minimal. Therefore, according to the RFA and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies this action will not impose a significant burden on a substantial number of small entities. The Secretary has also determined that this action does not meet criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy of Federal expenditures.

We have determined that the rule is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, the rule will not have effects on State, local and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Further, Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed the action herein under the threshold criteria of Executive Order 13132, Federalism, and have determined that this action would not have substantial direct effects on the rights, roles and responsibilities of States.

Paperwork Reduction Act of 1995

This rule at 45 CFR Part 50 contains collection of information requirements subject to Office of Management and Budget (OMB) Review under the Paperwork Reduction Act (PRA) of 1995. These collection of information requirements are necessary to carry out the provisions of the Exchange Visitor program. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 50.4 of the rule contains information collection requirements currently approved under OMB Control Number 0990–0001.

Sections 50.5(e)(4) and (5) of the rule contain disclosure requirements.

Section 50.5(e)(4) requires facilities or practices sponsoring an Exchange Visitor waiver request for the delivery of health care to post a notice of the charges for services. On an annual basis it is estimated that it will take 300 practices one hour each to prepare and post such notices. The total annual burden associated with this requirement is 300 hours.

Section 50.5(e)(5) of the rules contains the requirements for the submission of evidence that the applicant made unsuccessful efforts to recruit a U.S. physician. The burden associated with these requirements is the time and effort necessary for an applicant to submit the documentation. On an annual basis it is estimated that it will take 300 applicants two hours each to and submit this documentation. The total annual burden associated with this requirement is 600 hours.

The Department will submit a copy of this Rule to the Office of Management and Budget (OMB) for its review of the information collection requirements described above. These requirements are not effective until OMB has approved them.

If you comment on any of these information collection requirements, please mail copies directly to the following:

Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC, 20201; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Allison Eydt, HHS Desk Officer.

National Health Objectives for the Year 2010

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010. This is an HHS-led effort to set priorities for national attention. The activities covered by these amendments are related to the priority area (Access to Quality Health Services) in Healthy People 2010, which is available online at *http://www.health.gov/healthypeople.*

Smoke-Free Workplace

This program is not subject to the Public Health Systems Reporting Requirements.

List of Subjects in 45 CFR Part 50

Cultural exchange programs, Immigration, Health care, Medical care, Health professions, Health facilities, aliens.

Dated: September 20, 2002.

William R. Steiger,

Director, Office of Global Health Affairs.

Approved: September 27, 2002.

Tommy G. Thompson,

Secretary.

Accordingly, 45 CFR Part 50 is amended as follows:

PART 50—U.S. EXCHANGE VISITOR PROGRAM—REQUEST FOR WAIVER OF THE TWO-YEAR FOREIGN RESIDENCE REQUIREMENT

Paragraph 1. The authority citation for part 50 continues to read as follows:

Authority: 75 Stat. 527, 22 U.S.C. 2451 *et seq.*, 84 Stat, 116, 8 U.S.C. 1182 (e).

Par. 2. Section 50.1 is revised to read as follows:

§ 50.1 Authority

Under the authority of Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 527) and the Immigration and Nationality Act as amended (84 Stat. 116), the Department of Health and Human Services is an ''interested United States Government agency'' with the authority to request the Department of State to recommend to the Attorney General waiver of the two-year foreign residence requirement for Exchange Visitors under the Mutual Educational and Cultural Exchange Program. HHS eligibility requirement criteria for waivers are in addition to and independent of the existing waiver and visa criteria established by the Immigration and Naturalization Service (INS), the Department of State, and the Department of Labor. The waiver regulations described in this part do not relieve alien physicians seeking a waiver of the 2-year foreign residence requirement from complying with the terms and conditions imposed on their admission to the United States.

Par. 3. Section 50.2 is amended by:

1. Revising paragraphs (b) and (c).
2. Removing paragraph (d).

The revisions read as follows:

§ 50.2 Exchange Visitor Waiver Review Board.

* * * * *

(b) *Functions.* The Exchange Visitor Waiver Review Board is responsible for making thorough and equitable evaluations of applications submitted by institutions, acting on behalf of Exchange Visitors, to HHS for a favorable recommendation to the Department of State that the two-year foreign residence requirement for Exchange Visitors under the Exchange Visitor Program be waived.

(c) *Membership.* The Exchange Visitor Waiver Review Board consists of no fewer than three members and two alternates, of whom no fewer than three will consider any particular application. The Director of the Office of Global Health Affairs, Office of the Secretary, is an ex officio member of the Board and serves as its Chairman. The Director may designate a staff member of the Office of the Secretary to serve as member and Chairman of the Board in the Director's absence. The Assistant Secretary for Health appoints two regularly assigned members and two alternates to consider applications concerning health, biomedical research, and related fields. The Chairman may request the heads of operating divisions of the Department to appoint additional members to consider applications in other fields of interest to the Department. The Board may obtain expert advisory opinions from other sources. The Board may establish a workgroup from the operating divisions of the Department to consider applications for waivers based on the need for the delivery of health care services to underserved populations.

Par. 4. Section 50.3 is revised to read as follows:

§ 50.3 Policy.

(a) *Policy for waivers.* The Department of Health and Human Services endorses the philosophy that Exchange Visitors are committed to return home for at least two years after completing their program. This requirement was imposed to prevent the Program from becoming a stepping stone to immigration and to ensure that Exchange Visitors make available to their home countries their new knowledge and skills obtained in the United States. The Department will request waivers for the delivery of health care service to carry out the Department's mission to increase access to care for the nation's most medically underserved individuals. However, in keeping with the philosophy of the Program, the Exchange Visitor Waiver Review Board may determine the appropriate numbers and geographic areas for waivers for the delivery of health care service.

(b) *Criteria for waivers.* The Exchange Visitor Waiver Review Board carefully applies stringent and restrictive criteria to its consideration of requests that it support waivers for Exchange Visitors. Each application is evaluated individually based on the facts available.

(c) *Waiver for members of Exchange Visitor's family.* Where a decision is made to request a waiver for an Exchange Visitor, a waiver will also be requested for the spouse and children, if any, if they have J–2 visa status. When both members of a married couple are Exchange Visitors in their own right (*i.e.*, each has J–1 visa status), separate applications must be submitted for each of them.

Par. 5. Section 50.4 is revised to read as follows:

§ 50.4 Waivers for research.

In determining whether to request a waiver for an Exchange Visitor engaged in the conduct of research, the Board considers the following key factors:

(a) The program or activity at the applicant institution or organization in which the Exchange Visitor is employed must be of high priority and of national or international significance in an area of interest to the Department.

(b) The Exchange Visitor must be needed as an integral part of the program or activity, or of an essential component thereof, so that loss of his/her services would necessitate discontinuance of the program, or a major phase of it. Specific evidence must be provided on how the loss or unavailability of the individual's services would adversely affect the initiation, continuance, completion, or success of the program or activity. The applicant organization/institution must clearly demonstrate that a suitable replacement for the Exchange Visitor cannot be found through recruitment or any other means. The Board will not request a waiver when the principal problem appears to be one of administrative, budgetary, or program inconvenience to the institution or other employer.

(c) The Exchange Visitor must possess outstanding qualifications, training and experience well beyond the usually expected accomplishments at the graduate, postgraduate, and residency levels, and must clearly demonstrate the capability to make original and significant contributions to the program. The Board will not request a waiver simply because an individual has specialized training or experience or is occupying a senior staff position in a university, hospital, or other institution.

§ 50.5 [Redesignated as §50.7]

Par. 6. Redesignate § 50.5 as § 50.7

Par. 7. New section § 50.5 is added to read as follows:

§ 50.5 Waivers for the delivery of health care service.

In determining whether to request a waiver for an Exchange Visitor to deliver health care service, the Board will consider information from and coordinate with State Departments of Public Health (or the equivalent), other ''interested government agencies'' which request waivers, and other relevant agencies. The Board requires the following criteria for requests for waivers for the delivery of health care service:

(a) The Exchange Visitor must submit a statement that he or she does not have pending and will not submit any other ''interested government agency'' waiver request while HHS processes the waiver request being submitted.

(b) Waivers are limited to primary care physicians and general psychiatrists who have completed their primary care or psychiatric residency training programs no more than12 months before the date of commencement of employment under the contract described in subparagraph (d). This 12-month eligibility limitation is to ensure that the physicians' primary care training is current and they are not engaged in subspecialty training. This HHS eligibility requirement relates only to eligibility for an HHS waiver request and does not relieve physicians of the responsibility to maintain lawful status. Alien physicians are strongly encouraged to begin the waiver process as early as they possibly can while still in the residency training program. Early filing of the waiver request by the alien physician, coupled with timely processing of the request by the relevant government agencies, will facilitate the timely completion of the waiver process before the authorized J–1 admission expires, and the physician's subsequent application for change of nonimmigrant status from J–1 to H–1B.

(c) Primary care physicians are defined as: physicians practicing general internal medicine, pediatrics, family practice or obstetrics/gynecology willing to work in a primary care Health Professional Shortage Area (HPSA) or Medically Underserved Area or Population (MUA/P); and general psychiatrists who are willing to work in a Mental Health HPSA. Note: these HHS eligibility criteria for waivers are in addition to and independent of the

existing waiver and visa criteria established by the Immigration and Naturalization Service (INS), the Department of State, and the Department of Labor.

(d) The Exchange Visitor must have entered a contract with the applicant employer. This contract must:

(1) Require the Exchange Visitor to provide primary medical care in a facility physically located in an HHS-designated primary care HPSA or MUA/P, or general psychiatric care in a Mental Health HPSA.

(2) Require the Exchange Visitor to complete a term of employment of not less than three years providing primary care health services for not less than 40 hours per week.

(3) Require the Exchange Visitor to:

(i) Be licensed by the State where he or she will practice;

(ii) Have completed a residency in one of the following specialties: family practice, general pediatrics, obstetrics/gynecology, general internal medicine, or general psychiatry; and

(iii) Be either board certified or board eligible in the relevant primary care discipline.

(4) Be terminable only for cause until completion of the three-year commitment, except that, with the agreement of the alien physician, the employer may assign the contract to another eligible employer with the prior approval of HHS and compliance with all applicable INS and Department of Labor requirements. Prior to approving an assignment of the contract, HHS will review and consider the health care needs of the alien physician's current and proposed new locations, as well as the reasons for the request.

(5) Not contain a restrictive covenant or non-compete clause which prevents or discourages the physician from continuing to practice in any HHS-designated primary care HPSA or MUA/P or Mental Health HPSA after the period of obligation under the contract has expired.

(6) Provide that any amendment to the contract complies with all applicable Federal statutes, regulations and HHS policy.

(7) Be consistent with all applicable Federal statutes, regulations and HHS policy.

(e) The facility or practice sponsoring the physician:

(1) Must provide health services to individuals without discriminating against them because either they are unable to pay for those services or payment for those health services will be made under Medicare or Medicaid.

(2) May charge no more than the usual and customary rate prevailing in the geographic area in which the services are provided.

(3) Must provide care on a sliding fee scale for persons at or below 200 percent of poverty income level. Persons with third-party insurance may be charged the full fee for service.

(4) Must post a notice in a conspicuous location in the patient waiting area at the practice site to notify patients of the charges for service as required in this paragraph.

(5) Must provide evidence that the applicant facility made unsuccessful efforts to recruit a physician who is a United States physician for the position to be filled by the Exchange Visitor.

(6) Must provide a statement by the head of the facility to confirm the facility is located in a specific, designated HPSA or MUA/P, and that it provides medical care to Medicaid and Medicare eligible patients and to the uninsured indigent.

(f) The employer and the alien physician must submit information to the Secretary at the times and in the manner that the Secretary may reasonably require.

Par. 8. Revise § 50.6 to read as follows:

§ 50.6 Procedures for Submission of application to HHS.

(a) The Exchange Visitor Waiver Review Board will review applications submitted by private or non-federal institutions, organizations, or agencies or by a component agency of HHS. The Board will not accept applications submitted by Exchange Visitors or, unless under extenuating and exceptional circumstances, other U.S. Government Agencies.

(b) Applications, instruction sheets and information are available from the Executive Secretary, Exchange Visitor Waiver Review Board. An authorized official of the applicant institution (educational institution, hospital, laboratory, corporation, etc.) must sign the completed application. The applicant institution must send the completed application to the address indicated on the instruction sheet.

Par. 10. New section 50.8 is added to read as follows:

§ 50.8 Compliance.

If an alien physician acquires H–1B nonimmigrant status following approval by the INS of a request for waiver, then he or she becomes subject not only to the terms and conditions of the waiver, but also the terms and conditions of the H–1B nonimmigrant status. Failure to comply with those conditions will make that physician subject to removal from the United States by the INS.

[FR Doc. 02–31972 Filed 12–17–02; 8:45 am]

BILLING CODE 4165–15–P

Proposed Rules

Federal Register
Vol. 67, No. 244
Thursday, December 19, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 02N–0288]

Medical Devices; Designation of Special Control for Eight Surgical Suture Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the classification regulations for eight surgical suture devices previously reclassified into class II, in order to specify a special control for those devices. FDA is proposing the guidance document ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA'' as the special control that the agency believes will reasonably assure the safety and effectiveness of the devices, and FDA is announcing the availability for comment of that guidance document elsewhere in this issue of the **Federal Register**. Elsewhere in this issue of the **Federal Register**, FDA is also publishing a final rule reclassifying the absorbable polydioxanone surgical (PDS) suture from class III (premarket approval) to class II (special controls), and is designating as the special control for that device, effective immediately, the same guidance document here proposed as the special control for the eight surgical sutures devices covered by this proposed rule. After public comments are reviewed, FDA intends to issue a final rule for the eight surgical sutures covered by this proposed rule, making the guidance effective as the special control guidance for those sutures in addition to the PDS suture. Following the effective date of such final rule, any firm submitting a premarket notification (510(k)) for a new surgical suture will need to address the issues covered in the special control guidance. However, the firm needs only to show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

DATES: Submit written or electronic comments on the proposed rule by March 19, 2003. See section VI of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Anthony D. Watson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance.

SMDA broadened the definition of class II devices to mean those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act).

The 1976 amendments also broadened the definition of ''device'' in section 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified into class III all transitional devices, i.e., those devices previously regulated as new drugs, including surgical sutures.

In the **Federal Register** of December 16, 1977 (42 FR 63472), FDA published a notice that identified sutures as class III devices under the transitional provisions of the act. Section 520(l)(2) of the act (21 U.S.C. 360j(l)(2)) provides that the manufacturer or importer of a device classified in class III under the transitional provisions may file a petition for reclassification of the device into class I or class II. Procedures for filing and review of classification petitions are set forth in § 860.136 (21 CFR 860.136).

II. Regulatory History of the Devices

In accordance with section 520(l)(2) of the act and § 860.136, FDA, after consulting with members of the General and Plastic Surgery Devices Panel, reclassified certain surgical suture devices in part 878 (21 CFR 878) from class III to class II as follows:

1. Absorbable poly(glycolide/L-lactide) surgical suture (§ 878.4493), reclassification order (letter) dated September 14, 1989;

2. Stainless steel suture (§ 878.4495), reclassification order (letter) dated July 30, 1986;

3. Absorbable surgical gut suture (§ 878.4830), reclassification order (letter) dated September 19, 1988;

4. Nonabsorbable poly(ethylene terephthalate) surgical suture (§ 878.5000), reclassification order (letter) dated July 5, 1990;

5. Nonabsorbable polypropylene surgical suture (§ 878.5010), reclassification order (letter) dated July 5, 1990;

6. Nonabsorbable polyamide surgical suture (§ 878.5020), reclassification order (letter) dated February 15, 1990;

7. Natural nonabsorbable silk surgical suture (§ 878.5030), reclassification order (letter) dated November 9, 1990; and

8. Nonabsorbable expanded polytetrafluoroethylene surgical suture (§ 878.5035), reclassification order (letter) dated September 9, 1999.

III. Proposed Rule

FDA is proposing to amend the classification regulations for the foregoing eight surgical suture devices in order to designate a special control for each device. With the exception of the nonabsorbable expanded polytetrafluoroethylene surgical suture, all of the transitional surgical suture devices were reclassified before the provisions of SMDA became effective that broadened the definition of class II devices to establish special controls beyond performance standards. Thus, developing device-specific guidance as the means to provide reasonable assurance of the safety and effectiveness of the device was not a regulatory option at the time of their original reclassification. No mandatory performance standard has been developed for these devices.

Nonabsorbable expanded polytetrafluoroethylene (ePTFE) surgical sutures were reclassified from class III to class II (special controls) and special controls were identified, including device-specific labeling and FDA-recognized consensus standards.

FDA has developed a guidance document for surgical suture devices and, under the SMDA authority, is now proposing to apply it as the special control the agency believes will reasonably assure the safety and effectiveness of these devices. FDA is identifying the guidance document entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA'' as the proposed special control. The special controls included in the guidance document are the same as those identified in the Code of Federal Regulations (CFR) for ePTFE surgical sutures with one exception. The consensus standard identified in 21 CFR 878.5035 as United States Pharmacopoeia (U.S.P.) 21 has been updated in the guidance to ''the currently recognized USP standard'' to reflect the fact that the compendium of U.S.P. standards is now published yearly. In the past, it was published only every 5 years, U.S.P. 21 having been the 1985 publication.

IV. Risks to Health

FDA has identified the following risks to health associated with the use of surgical sutures: Improper selection and use, suture breakage, adverse tissue reaction, and infection.

A. Improper Selection and Use

Proper selection of the size and type of suture most suitable for the type of tissue and surgical site depends on the performance of the suture, the material composition, absorbability (and if absorbable, the rate of absorption), tensile strength (and changes in tensile strength over time), and/or specific instructions for certain types of sutures, tissues, or surgical sites (e.g., ''Prolonged contact with bile or urine may result in calculus formation.''). Improper selection and use can result in:

- Wound dehiscence (splitting open of the sutured tissue),
- Unsatisfactory appearance of the surgical scar, or
- Impaired function or mobility at the surgical site.

Any of these events may result in the patient having to undergo another surgical procedure.

B. Suture Breakage

The intended use of a surgical suture is to successfully hold tissue together until healing is sufficiently complete. Suture breakage before the sutured wound heals can result in wound dehiscence. This may interfere with the normal healing process and/or result in the patient having to undergo another surgical procedure.

C. Adverse Tissue Reaction

An adverse tissue reaction to the surgical suture is a potential risk to health generally associated with all surgical sutures if biocompatibility, toxicity, and immunogenicity of the sutures are not adequately addressed. An adverse tissue reaction may result from:

- Foreign body reaction to the suture material;
- Toxicity of nonbiocompatible materials (dyes, coatings);
- Cytotoxic levels of sterilization residues;
- Absorbable suture materials that are absorbed too quickly or too slowly, producing a toxic response; or
- A local or systemic allergic reaction in patients with an abnormal sensitivity to the suture material, dye or coating.

D. Infection

Infection is a potential risk to health generally associated with all surgical procedures and implanted devices. Infection can result from:

- Inadequate sterilization of the surgical suture,
- Failure of the packaging to maintain sterility, or
- Contamination after the package is opened.

Preventative measures, including implantation of a sterile device and strict adherence to accepted sterile technique are the best defenses against infection.

V. Special Controls

FDA believes that in addition to general controls, the class II special control guidance document entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA'' is an adequate special control to address the risks to health associated with surgical sutures and thus provide reasonable assurance of the safety and effectiveness of the device. The class II special controls guidance document provides information on how to meet premarket notification (510(k)) submission requirements for surgical sutures, including recommendations regarding device description, preclinical data, clinical data, color additives, sterilization, and labeling. It identifies voluntary consensus standards that address surgical suture specifications and performance, material biocompatibility and sterilization, and FDA guidance documents that address material biocompatibility and sterilization:

The class II special controls guidance document addresses the risks to health associated with surgical sutures in the following four ways:

- Adherence to the labeling recommendations in the guidance addresses the risk of improper suture selection and use by ensuring that users have adequate information on suture performance, material composition, absorbability (and if absorbable, the rate of absorption) and changes in tensile strength over time, to select the proper size and type of suture for the type of tissue and surgical site;
- Adherence to the voluntary consensus standards recommended in the guidance addresses the risk of surgical suture breakage by ensuring that surgical sutures have adequate tensile strength, diameter, and needle attachment strength;
- Adherence to the biocompatibility testing recommendations and biocompatibility standards in the guidance addresses the risk of an adverse tissue reaction by ensuring that the surgical sutures are made of

materials with adequate biocompatibility and that the absorbable surgical suture materials have appropriate pharmacokinetic properties; and

• Adherence to the sterilization guidance and the voluntary consensus standards recommended in the guidance document addresses the risk of infection by ensuring that the surgical suture is sterile and has adequate packaging to maintain sterility.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the guidance document entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' This guidance document is proposed as the special control for these eight surgical sutures and is not yet final or in effect as to these sutures. After public comments on this proposed rule and on the guidance document are reviewed, FDA intends to issue a final rule for these eight surgical sutures and the guidance document will become final and effective as the special control guidance for them. Following the effective date of such final rule, any firm submitting a premarket notification (510(k)) for a new surgical suture will need to address the issues covered in the special control guidance. However, the firm needs only to show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness. Also, elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule reclassifying the absorbable PDS suture from class III (premarket approval) to class II (special controls), and designating the same guidance document as the special control for that device. The special control guidance document is immediately in effect as the special control for the PDS suture only, but as to that suture remains subject to public comment and possible future revision under the agency's good guidance practices.

VI. Proposed Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

VII. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act 5 U.S.C. 601–612, and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The special controls guidance document does not impose any new burdens on manufacturers of these devices. FDA has granted 201 substantial equivalence orders from 95 manufacturers of these devices in the last 10 years. The guidance document is based upon the review of the information submitted in these premarket notifications. Based on the review of the premarket notifications, FDA believes that manufacturers presently marketing these devices are in conformance with the guidance document and they will not need to take any further action, if this rule is finalized. The guidance document merely assures that, in the future, devices of these generic types will be at least as safe and effective as the presently marketed devices. These devices are already subject to premarket notification and labeling requirements. The guidance document advises manufacturers on appropriate means of complying with these requirements.

The consensus standards in the guidance were recognized under section 514(c) of the act (21 U.S.C. 360d(c)) for the purpose of demonstrating certain aspects of substantial equivalency. The manufacturer may provide a declaration of conformity to a recognized standard to meet a premarket notification requirement. Ordinarily, this will provide a simplified method of meeting the requirement. The manufacturer may choose to submit other data or information to meet the requirement. The guidance document sets out options that the manufacturer has in this respect.

For the foregoing reasons, the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

The information collections addressed in the special control guidance document identified by this proposed rule have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120).

X. Submission of Comments

You may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance by March 19, 2003. You should submit two copies of any comments. Individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this document. The guidance document and comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 878 be amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 878.4493 is amended by revising paragraph (b) to read as follows:

§ 878.4493 Absorbable poly(glycolide/L-lactide) surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

3. Section 878.4495 is amended by revising paragraph (b) to read as follows:

§ 878.4495 Stainless steel suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

4. Section 878.4830 is amended by revising paragraph (b) to read as follows:

§ 878.4830 Absorbable surgical gut suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this document.

5. Section 878.5000 is amended by revising paragraph (b) to read as follows:

§ 878.5000 Nonabsorbable poly(ethylene terephthalate) surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this document.

6. Section 878.5010 is amended by revising paragraph (b) to read as follows:

§ 878.5010 Nonabsorbable polypropylene surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this document.

7. Section 878.5020 is amended by revising paragraph (b) to read as follows:

§ 878.5020 Nonabsorbable polyamide surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

8. Section 878.5030 is amended by revising paragraph (b) to read as follows:

§ 878.5030 Natural nonabsorbable silk surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

9. Section 878.5035 is amended by revising paragraph (b) to read as follows:

§ 878.5035 Nonabsorbable expanded polytetrafluoroethylene surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

Dated: October 16, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125638–01]

RIN 1545–BA00

Guidance Regarding Deduction and Capitalization of Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that explain how section 263(a) of the Internal Revenue Code (Code) applies to amounts paid to acquire, create, or enhance intangible assets. This document also contains proposed regulations under section 167 of the Code that provide safe harbor amortization for certain intangible assets, and proposed regulations under section 446 of the Code that explain the manner in which taxpayers may deduct debt issuance costs. Finally, this document provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 19, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for April 22, 2003, must be received by April 1, 2003.

ADDRESSES: Send submissions to CC:ITA:RU (REG–125638–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:ITA:RU (REG–125638–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the IRS Internet site at: *http://www.irs.gov/regs.* The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Andrew J. Keyso, (202) 927–9397; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

In recent years, much debate has focused on the extent to which section 263(a) of the Code requires taxpayers to capitalize amounts paid to acquire, create, or enhance intangible assets. On January 24, 2002, the IRS and Treasury Department published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (67 FR 3461) announcing an intention to provide guidance in this area. The ANPRM described and explained rules under consideration by the IRS and Treasury Department and invited public comment on these rules.

Explanation of Provisions

I. Introduction

The proposed regulations under section 263(a) of the Code set forth a general principle that requires capitalization of certain amounts paid to acquire, create, or enhance intangible assets. In addition, the proposed regulations identify specific intangible assets for which capitalization is required under the general principle. These identified intangible assets are grouped into categories in the proposed regulations based on whether the intangible asset is acquired from another party or created by the taxpayer.

The proposed regulations also provide rules for determining the extent to which taxpayers must capitalize transaction costs that facilitate the acquisition, creation, or enhancement of

intangible assets or that facilitate certain restructurings, reorganizations, and transactions involving the acquisition of capital. These transaction cost rules allow for the use of simplifying conventions intended to promote administrability and reduce the cost of compliance with section 263(a). In addition, the proposed regulations under section 167 of the Code provide a safe harbor amortization period applicable to certain created intangible assets that do not have readily ascertainable useful lives and for which an amortization period is not otherwise prescribed or prohibited by the Code, regulations, or other published guidance.

As a general rule, the proposed regulations are not intended to apply to a taxpayer's intangible interest in land. Thus, the proposed regulations do not apply to amounts paid to acquire or create easements, life estates, mineral interests, timber rights, or other intangible interests in land. An exception is made for amounts paid to acquire, create, or enhance a lease of real property. Several rules contained in the proposed regulations address amounts paid to acquire, create, or enhance leases of property, including leases of real property. The IRS and Treasury Department are considering future guidance addressing the treatment of amounts paid to acquire, create, or enhance tangible assets. Appropriate rules relating to the treatment of interests in land will be addressed in that future guidance.

II. General Principle of Capitalization

A. Overview

The proposed regulations require capitalization of amounts paid to acquire, create, or enhance an intangible asset. For this purpose, an *intangible asset* is defined as (1) any intangible that is acquired from another person in a purchase or similar transaction (as described in paragraph (c) of the proposed regulations); (2) certain rights, privileges, or benefits that are created or originated by the taxpayer and identified in paragraph (d) of the proposed regulations; (3) a separate and distinct intangible asset (as defined in paragraph (b)(3) of the proposed regulations); or (4) a future benefit that the IRS and Treasury Department identify in subsequent published guidance as an intangible asset for which capitalization is required. As discussed in Part V of this preamble, the proposed regulations also require capitalization of transaction costs that facilitate the acquisition, creation, or enhancement of an intangible asset or that facilitate a restructuring or reorganization of a business entity or a transaction involving the acquisition of capital, such as a stock issuance, borrowing, or recapitalization.

Through this definition of *intangible asset,* the IRS and Treasury Department seek to provide certainty for taxpayers by identifying specific categories of rights, privileges, and benefits, the costs of which are appropriately capitalized. In determining the categories of expenditures for which capitalization is specifically required, the IRS and Treasury Department considered expenditures for which the courts have traditionally required capitalization. These categories will help promote consistent interpretation of section 263(a) by taxpayers and IRS field personnel.

B. Separate and Distinct Intangible Asset

The proposed regulations define the term *separate and distinct intangible asset* based on factors traditionally used by the courts to determine whether an expenditure serves to acquire, create, or enhance a separate and distinct asset. Courts have considered (1) whether the expenditure creates a distinct and recognized property interest subject to protection under state or federal law; (2) whether the expenditure creates anything transferrable or salable; and (3) whether the expenditure creates anything with an ascertainable and measurable value in money's worth. See, *e.g., Commissioner* v. *Lincoln Savings & Loan Ass'n,* 403 U.S. 345, 355 (1971); *Central Texas Savings & Loan Ass'n* v. *United States,* 731 F.2d 1181, 1184 (5th Cir. 1984); *Colorado Springs National Bank* v. *United States,* 505 F.2d 1185, 1192 (10th Cir. 1974); *Briarcliff Candy Corp.* v. *Commissioner,* 475 F.2d 775, 784 (2nd Cir. 1973).

The proposed regulations provide that the determination of whether an amount serves to acquire, create, or enhance a separate and distinct intangible asset is made as of the taxable year during which the amount is paid, and not later using the benefit of hindsight.

The IRS and Treasury Department note that the separate and distinct asset standard has not historically yielded the same level of controversy as the significant future benefit standard. Moreover, several commentators suggested that, if the proposed regulations adopt a general principle of capitalization, the separate and distinct asset test is a workable principle in practice.

C. Significant Future Benefits Identified in Published Guidance

A fundamental purpose of section 263(a) is to prevent the distortion of taxable income through current deduction of expenditures relating to the production of income in future years. Thus, in determining whether an expenditure should be capitalized, the Supreme Court has considered whether the expenditure produces a significant future benefit. *INDOPCO, Inc.* v. *Commissioner,* 503 U.S. 79 (1992). A ''significant future benefit'' standard, however, does not provide the certainty and clarity necessary for compliance with, and sound administration of, the law. Consequently, the IRS and Treasury Department believe that simply restating the significant future benefit test, without more, would lead to continued uncertainty on the part of taxpayers and continued controversy between taxpayers and the IRS. Accordingly, the IRS and Treasury Department have initially defined the exclusive scope of the significant future benefit test through the specific categories of intangible assets for which capitalization is required in the proposed regulations. The future benefit standard underlies many of these categories.

The IRS and Treasury Department recognize, however, that there may be expenditures that are not identified in these categories, but for which capitalization is nonetheless appropriate. For this reason, the proposed regulations require capitalization of non-listed expenditures if those expenditures serve to produce future benefits that the IRS and Treasury Department identify in published guidance as significant enough to warrant capitalization. A determination in published guidance that a particular category of expenditure produces a benefit for which capitalization is appropriate will apply prospectively, and will not apply to expenditures incurred prior to the publication of such guidance.

For purposes of future guidance, the IRS and Treasury Department will determine whether capitalization is appropriate for a particular category of expenditures by taking into account all relevant facts and circumstances, including the probability, measurability, and size of the expected future benefit. Such published guidance may provide a safe harbor amortization period for any expenditure required to be capitalized. If the published guidance does not provide a safe harbor amortization period, the expenditure may be eligible for the 15-year safe harbor amortization

period described in Part VII.A. of this preamble.

The IRS and Treasury Department believe that, by applying the significant future benefit test in the manner described above, the proposed regulations will substantially reduce the burden on both taxpayers and IRS field personnel of determining whether an expenditure produces significant future benefits for which capitalization is required. If an expenditure is not described in one of the categories in the proposed regulations or in subsequent future guidance, taxpayers and IRS field personnel need not determine whether that expenditure produces a significant future benefit. Upon finalization of the proposed regulations, the IRS expects to identify and withdraw existing capitalization guidance that is susceptible to application inconsistent with these regulations.

III. Intangibles Acquired From Another

Paragraph (c) of the proposed regulations requires capitalization of amounts paid to another party to acquire an intangible from that party in a purchase or similar transaction. This rule reflects well-settled law requiring capitalization of the purchase price (including sales taxes and similar charges) paid to acquire property from another. The regulations provide examples of intangibles that must be capitalized under this rule if the intangible is acquired from another person. Many of the intangibles required to be capitalized by this rule constitute ''amortizable section 197 intangibles'' eligible for 15-year amortization under section 197(a).

The rule does not address the treatment of any transaction costs the taxpayer may incur to facilitate the acquisition of an intangible from another party. The treatment of transaction costs is described in paragraph (e) of the proposed regulations. So, for example, while this rule requires capitalization of the amount paid to another party to acquire an intangible from that party, this rule does not describe the treatment of the various ancillary costs such as attorney fees and broker commissions incurred to facilitate the acquisition.

In addition, the rule applies only to acquired intangibles, and not to created intangibles. For example, the rule requires a taxpayer to capitalize the amount paid to acquire a customer base from another person. However, the rule does not require a taxpayer to capitalize costs that it incurs to create its own customer base.

IV. Created Intangibles

Paragraph (d) of the proposed regulations requires taxpayers to capitalize amounts paid to another party to create or enhance with that party certain identified intangibles discussed in Parts IV.A. through IV.H. of this preamble. Examples are included to demonstrate the scope of these rules.

To reduce the administrative and compliance costs associated with capitalizing these amounts, the proposed regulations adopt a ''12-month rule'' applicable to most created intangibles. Under this 12-month rule, a taxpayer is not required to capitalize amounts that provide benefits of a relatively brief duration. The 12-month rule is discussed in further detail in Part VI of this preamble.

As in the case of acquired intangibles, the rules in paragraph (d) relating to created intangibles address the amounts paid for the intangible itself, and not the related transaction costs incurred to facilitate the creation of the intangible. The treatment of transaction costs is described in paragraph (e) of the proposed regulations.

A. Financial Interests

The proposed regulations require taxpayers to capitalize amounts paid to another party to create or originate with that party certain financial interests. The financial interests identified in the rule include interests in entities (*e.g.*, corporations, partnerships, trusts) and financial instruments (*e.g.,* debt instruments, notional principal contracts, options).

The 12-month rule does not apply to amounts paid to create or enhance a financial interest described in this rule, regardless of whether the amounts are also described in another part of paragraph (d) of the proposed regulations.

B. Prepaid Expenses

In general, existing law requires capitalization of prepaid expenses. See, *e.g.*, *Commissioner* v. *Boylston Market Ass'n,* 131 F.2d 966 (1st Cir. 1942). The proposed regulations require capitalization of amounts prepaid for benefits to be received in the future. The proposed regulations modify slightly the rule contained in the ANPRM, which proposed capitalization of ''amounts prepaid for goods, services, or other benefits (such as insurance) to be received in the future.'' The reference to ''goods'' in the ANPRM caused some readers to question whether the proposed rule is intended to apply to the acquisition of tangible property. The rule is not intended to apply to the acquisition of tangible property. The rule proposes capitalization of prepaid expenses on the ground that the prepayment creates an intangible asset in the form of a right; specifically, the right to receive goods, services, or other benefits in the future. The IRS and Treasury Department decided to eliminate further confusion by modifying the rule to remove the explicit reference to goods.

Further, the reference in the rule to ''benefits to be received in the future'' is not intended to imply a form of ''significant future benefit'' test applicable to any expenditure that can be expected to result in some future benefit. As demonstrated by examples in the proposed regulations, the rule is intended merely to require capitalization of prepaid expenses.

C. Amounts Paid To Obtain Certain Memberships and Privileges

The proposed regulations require taxpayers to capitalize amounts paid to an organization to obtain or renew a membership or privilege from that organization. The rule clarifies that amounts paid to obtain a quality certification of the taxpayer's products, services, or business processes are not within the scope of the rule. Thus, for example, the rule does not require capitalization of amounts paid to obtain benefits such as ISO 9000 certification or Underwriters' Laboratories Listing.

D. Amounts Paid To Obtain Certain Rights From a Governmental Agency

The proposed regulations require taxpayers to capitalize amounts paid to a governmental agency for a trademark, trade name, copyright, license, permit, franchise, or other similar right granted by that governmental agency. In general, this rule is directed at the initial fee paid to a government agency. Under the 12-month rule, taxpayers are not required to capitalize annual renewal fees paid to the government agency. An example in the proposed regulations demonstrates this point.

These regulations do not affect the treatment of expenditures under other provisions of the Code. Accordingly, an amount paid to a government agency to obtain a patent from that agency is not required to be capitalized under this section if the amount is deductible under section 174.

E. Amounts Paid To Obtain or Modify Contract Rights

The proposed regulations require taxpayers to capitalize amounts (other than *de minimis* amounts) paid to another party to induce that party to enter into, renew, or renegotiate an

agreement that produces certain rights for the taxpayer. This rule recognizes that some agreements produce contract rights that are reasonably certain to produce future benefits for the taxpayer, or for which courts have traditionally required capitalization. For example, the rule requires capitalization of amounts paid to enter into or renegotiate a lease contract or a contract providing the taxpayer the right to acquire or provide services. The rule also requires capitalization of an amount paid to obtain a covenant not to compete. Recognizing that employment contracts often are entered into along with covenants not to compete, the proposed regulations contain a rule similar to that in § 1.197–2(b)(9) of the regulations. An agreement for the performance of services does not have substantially the same effect as a covenant not to compete and, accordingly, amounts paid for personal services actually rendered are not required to be capitalized under this rule.

On the other hand, the rule recognizes that many agreements do not produce contract rights for which capitalization is appropriate. Thus, the rule does not require a taxpayer to capitalize an amount that merely creates an expectation that a customer or supplier will maintain its business relationship with the taxpayer.

The rule contains a de minimis exception under which inducements that do not exceed $5,000 are not required to be capitalized. The IRS and Treasury Department request comments on whether a non-cash inducement is properly valued at the taxpayer's cost to acquire or produce the inducement, or at the fair market value of the inducement. If the non-cash inducement is properly valued at its fair market value, comments are requested regarding the treatment of any gain or loss realized on the transfer of the non-cash inducement.

This rule and the financial interests rule (described in Part IV.A. of this preamble) are the exclusive capitalization provisions for created contracts. In other words, amounts paid to enter into an agreement not identified in these rules are not required to be capitalized under the general principle of capitalization on the theory that the agreement is a separate and distinct asset.

F. Amounts Paid To Terminate Certain Contracts

The proposed regulations require taxpayers to capitalize an amount paid to terminate three types of contracts. The purpose of the rule is to require capitalization of termination payments that enable the taxpayer to reacquire some valuable right it did not possess immediately prior to the termination. Thus, capitalization is required for payments by a lessor to terminate a lease agreement with a lessee. See *Peerless Weighing and Vending Machine Corp.* v. *Commissioner,* 52 T.C. 850 (1969). Capitalization also is required for payments by a taxpayer to terminate an agreement that provides another party the exclusive right to acquire or use the taxpayer's property or services or to conduct the taxpayer's business. See *Rodeway Inns of America* v. *Commissioner,* 63 T.C. 414 (1974). Finally, capitalization is required for payments to terminate an agreement that prohibits the taxpayer from competing with another or from acquiring property or services from a competitor of another.

On the other hand, the rule does not require capitalization in cases where the taxpayer, as a result of the termination, does not reacquire a right for which capitalization is appropriate. For example, the rule does not require a taxpayer to capitalize a payment to terminate a supply contract with a supplier, and does not require a lessee to capitalize a payment to terminate a lease agreement with a lessor. This also is consistent with existing law. See, *e.g., Stuart Co.* v. *Commissioner,* 195 F.2d 176 (9th Cir. 1952), aff'g 9 T.C.M. (CCH) 585 (1950); *Olympia Harbor Lumber Co.* v. *Commissioner,* 30 B.T.A. 114 (1934), aff'd, 79 F.2d 394 (9th Cir. 1935); *Denholm & McKay Co.* v. *Commissioner,* 2 B.T.A. 444 (1925); Rev. Rul. 69–511 (1969–2 C.B. 24).

The proposed regulations modify, in several respects, the rule described in the ANPRM. First, the proposed regulations expand the rule to require capitalization of an amount paid to terminate a contract that grants another the exclusive right to acquire or use the taxpayer's property or services. Thus, a taxpayer must capitalize amounts paid to terminate an exclusive license to use the taxpayer's property. Second, the proposed regulations remove the reference to a defined geographic area from the rule requiring capitalization of amounts paid to terminate an agreement that provides another party the exclusive right to conduct the taxpayer's business. The IRS and Treasury Department are concerned that this reference may lead to uncertainty regarding whether the parties intended for a particular right to be limited to a defined geographic area, especially where the agreement is silent regarding geographic area. Third, as discussed above, the proposed regulations require a taxpayer to capitalize an amount paid to another to terminate an agreement that prohibits the taxpayer from competing with another.

G. Amounts Paid To Acquire, Produce, or Improve Real Property Owned by Another

The proposed regulations require taxpayers to capitalize an amount paid to acquire real property that is relinquished to another, or to produce or improve real property that is owned by another, if the real property is reasonably expected to produce significant economic benefits for the taxpayer. The purpose of this rule is to recognize a long line of cases and rulings that require capitalization where the taxpayer provides property to another or improves property of another with the expectation that the property will provide significant future benefits for the taxpayer. See *D. Loveman & Son Export Corp.* v. *Commissioner,* 34 T.C. 776 (1960), aff'd 296 F.2d 732 (6th Cir. 1961) (expenditures incurred by the taxpayer to pave a public road benefitted the taxpayer's business and were appropriately capitalized); *Chicago and N.W. Railway Co.* v. *Commissioner,* 39 B.T.A. 661 (1939) (conveyance of land by a railroad to a city for highway purposes, the effect of which is of lasting benefit by way of flood protection, access to city streets, and reduced cost of crossing protection is a capital expenditure); *Kauai Terminal Ltd.* v. *Commissioner,* 36 B.T.A. 893 (1937) (expenditures incurred by the taxpayer to construct a publicly owned breakwater for the purpose of improving the taxpayer's freight lighterage operation are capital expenditures); Rev. Rul. 69–229 (1969–1 C.B. 86) (expenditures incurred by a railroad company for construction of a state-owned highway bridge over its tracks create a long term business benefit for the taxpayer and are therefore capital expenditures); Rev. Rul. 66–71 (1966–1 C.B. 44) (expenditures incurred by the taxpayer for dredging to deepen the portion of a harbor alongside the taxpayer's pier leading to a navigable channel are capital expenditures).

The proposed regulations limit the scope of the rule to real property, and not to all tangible property as originally contemplated by the ANPRM. Some courts have required capitalization on the ground that an intangible asset is created where the taxpayer provides tangible personal property to another. See, *e.g., Alabama Coca-Cola Bottling Co.* v. *Commissioner,* T.C. Memo. 1969–123 (capitalization required for costs incurred by a wholesaler to provide signs, scoreboards, and clocks bearing

its product logo to retail outlets; the expenditure created valuable benefits that would benefit the taxpayer beyond the taxable year). Nonetheless, the IRS and Treasury Department are reluctant to extend the rule to cases involving tangible personal property. Inclusion of personal property within the scope of the rule would require capitalization of many expenditures that are properly deductible under current law, such as advertising or business promotion costs.

The proposed regulations clarify that the rule is not intended to apply where the taxpayer is selling the real property, is providing the real property to another as payment for some other property or service provided to the taxpayer, or is selling services to produce or improve the property. The proposed regulations also clarify that the rule is not intended to change the result in Rev. Rul. 2002–9 (2002–10 I.R.B. 614), regarding the treatment of impact fees paid by a developer of real property. Rev. Rul. 2002–9 provides that impact fees incurred by a taxpayer in connection with the construction of real property are capitalized costs allocable to the real property. The proposed regulations provide that these costs do not create an intangible asset for which capitalization is required by this rule. Similarly, the proposed regulations provide that real property turned over to a government entity in connection with a real estate development project (dedicated improvements) also are outside the scope of this rule. Such costs are allocable to the property produced, as provided in section 263A and the regulations thereunder.

For costs required to be capitalized under this rule, the proposed regulations under section 167 permit safe harbor amortization ratably over a 25-year period. The IRS and Treasury Department did not adopt the approach suggested by commentators of permitting amortization over the recovery period prescribed for the property under section 168 as if the taxpayer had actually owned the real property and used it in its trade or business. The IRS and Treasury Department believe that such an approach would raise difficult questions regarding the appropriate class life or recovery period to be applied. In addition, such an approach would not address the treatment of property for which a class life or recovery period is not prescribed by section 168, such as vacant land. The 25-year safe harbor will eliminate the uncertainty that would otherwise exist if amortization were permitted over the period of the expected future benefit. The IRS and Treasury Department invite comments on this safe harbor amortization provision.

H. Amounts Paid To Defend or Perfect Title to Intangible Property

The proposed regulations require taxpayers to capitalize an amount paid to another party to defend or perfect title to intangible property where the other party challenges the taxpayer's title to the intangible property. This is consistent with existing regulations under section 263(a) of the Code. See § 1.263(a)–2(c). The rule is not intended to require capitalization of amounts paid to protect the property against infringement and to recover profits and damages as a result of an infringement. As under current law, these costs are generally deductible. See, *e.g., Urquhart* v. *Commissioner,* 215 F.2d 17 (3rd Cir. 1954) (expenditures made by a licensor of patents to protect against infringement and to recover profits and damages were made to protect, conserve, and maintain business profits, and not to defend or perfect title to property). Whether an amount is paid to defend or perfect title, on the one hand, or to protect against infringement, on the other, is a factual matter.

V. Transaction Costs

A. In General

The proposed regulations provide a two-pronged rule that requires taxpayers to capitalize transaction costs. The first prong of the rule requires capitalization of transaction costs that facilitate the taxpayer's acquisition, creation, or enhancement of an intangible asset. The second prong of the rule requires capitalization of transaction costs that facilitate the taxpayer's restructuring or reorganization of a business entity or facilitate a transaction involving the acquisition of capital, including a stock issuance, borrowing, or recapitalization.

The first prong of the transaction cost rule recognizes that capitalization is required not only for the cost of an asset itself, but for the ancillary expenditures incurred in acquiring, creating, or enhancing the intangible asset. *Woodward* v. *Commissioner,* 397 U.S. 572 (1970). The proposed regulations require that taxpayers capitalize these transaction costs to the basis of the intangible asset acquired, created, or enhanced.

The second prong of the transaction cost rule recognizes that transaction costs that effect a change in the taxpayer's capital structure create betterments of a permanent or indefinite nature and are appropriately capitalized. See *INDOPCO, Inc.* v. *Commissioner,* 503 U.S. 79 (1992) (professional fees incurred by a target corporation in a stock acquisition); *General Bancshares Corp.* v. *Commissioner,* 326 F.2d 712 (8th Cir. 1964) (costs to issue a stock dividend to shareholders); *Mills Estate, Inc.* v. *Commissioner,* 206 F.2d 244 (2nd Cir. 1953) (professional fees incurred in a recapitalization). As discussed in further detail in Part VII of this preamble (relating to safe harbor amortization), the proposed regulations do not address whether these costs increase the taxpayer's basis in property or are treated as a separate intangible asset. Comments are requested on these issues. However, in the case of transaction costs that facilitate a stock issuance or recapitalization, the proposed regulations are consistent with existing law, which provides that such capital expenditures do not create a separate intangible asset, but instead offset the proceeds of the stock issuance. See Rev. Rul. 69–330 (1969–1 C.B. 51); *Affiliated Capital Corp.* v. *Commissioner,* 88 T.C. 1157 (1987). The proposed regulations provide that capitalization is not required under this provision for stock issuance costs of open-end regulated investment companies (other than those costs incurred during the initial stock offering period). See Rev. Rul. 94–70 (1994–2 C.B. 17).

As discussed in Part VII of this preamble, costs required to be capitalized under the second prong of the transaction cost rule are not eligible for the safe harbor amortization provision provided in the regulations. However, comments are requested on whether the safe harbor amortization provision should apply to any of these costs.

The term *reorganization* as used in the second prong of the transaction cost rule contemplates a reorganization in the broad sense of a change to an entity's capital structure, and not merely a transaction that constitutes a tax-free reorganization under the Code. The terms *reorganization* and *restructuring* are broad enough to include transactions under section 351 of the Code, as well as bankruptcy reorganizations. While the term is broad enough to encompass stock redemptions, the treatment of costs incurred in connection with a stock redemption is specifically prescribed by section 162(k). The terms *reorganization* and *restructuring* are not intended to refer to mere changes in an entity's business processes, commonly referred to as ''re-engineering.'' Thus, a taxpayer's change from a batch inventory processing system to a ''just-in-time'' inventory processing system,

regardless of whether the taxpayer refers to such change as a business ''restructuring,'' is not within the scope of the rule, as demonstrated by example in the proposed regulations.

Consistent with existing law, the rule requires capitalization of costs to facilitate a divisive transaction. See *Bilar Tool & Dye Corp.* v. *Commissioner,* 530 F.2d 708 (6th Cir. 1976). However, the rule does not require capitalization of amounts paid to facilitate a divisive transaction where the divestiture is pursuant to a government mandate, unless the divestiture is a condition of permitting the taxpayer to participate in a separate restructuring or reorganization transaction. See, *e.g., El Paso Co.* v. *United States,* 694 F.2d 703 (Fed Cir. 1982); *American Stores Co.* v. *Commissioner,* 114 T.C. 458 (2000).

In the ANPRM, the second prong of the transaction cost rule applied to ''an applicable asset acquisition within the meaning of section 1060(c).'' This language caused confusion as to whether the second prong of the transaction cost rule applied to acquisitions of tangible assets. To clarify that the transaction cost rules do not apply to acquisitions of tangible assets (other than acquisitions of real property described in Part IV.G. of this preamble) the proposed regulations delete the reference to section 1060(c). To the extent that intangible assets are acquired in an applicable asset acquisition under section 1060(c), the first prong of the transaction cost rule requires capitalization of transaction costs that facilitate the acquisition of those intangible assets. Transaction costs allocable to tangible assets are capitalized to the extent provided by existing law. The IRS and Treasury Department are considering separate guidance to address the treatment of expenditures to acquire, create, or enhance tangible assets.

B. Facilitate

The proposed regulations provide a ''facilitate'' standard for purposes of determining whether transaction costs must be capitalized. The facilitate standard is intended to be narrower in scope than a ''but-for'' standard. Thus, some transaction costs that arguably are capital under a but-for standard, such as costs to downsize a workforce after a corporate merger (including severance payments) or costs to integrate the operations of merged businesses, are not required to be capitalized under a facilitate standard. While such costs may not have been incurred but-for the merger, the costs do not facilitate the merger itself. The proposed regulations provide that an amount facilitates a transaction if it is incurred in the process of pursuing the acquisition, creation, or enhancement of an intangible asset or in the process of pursuing a restructuring, reorganization, or transaction involving the acquisition of capital.

In response to the ANPRM, commentators suggested that the proposed regulations should distinguish costs to facilitate the acquisition of a trade or business from costs to investigate the acquisition of a trade or business. Several commentators suggested that the proposed regulations should adopt the standard contained in Rev. Rul. 99–23 (1999–1 C. B. 998).

Rev. Rul. 99–23 provides a ''whether-and-which'' test for distinguishing costs to investigate the acquisition of a new trade or business (which are amortizable under section 195) from costs to facilitate the acquisition (which are capital expenditures under section 263(a) and are not amortizable under section 195). Under this test, costs incurred to determine whether to acquire a new trade or business, and which new trade or business to acquire, are investigatory costs. Costs incurred in the attempt to acquire a specific business are costs to facilitate the consummation of the acquisition.

Because Rev. Rul. 99–23 has created controversy between taxpayers and the IRS, the proposed regulations do not adopt the standard contained in Rev. Rul. 99–23. Rather, the proposed regulations provide, as a bright line rule, that an amount paid in the process of pursuing an acquisition of a trade or business (whether the acquisition is structured as an acquisition of stock or of assets and whether the taxpayer is the acquirer in the acquisition or the target of the acquisition) is required to be capitalized only if the amount is ''inherently facilitative'' or if the amount relates to activities performed after the earlier of the date a letter of intent (or similar communication) is issued or the date the taxpayer's Board of Directors approves the acquisition proposal. For this purpose, the proposed regulations identify amounts that are inherently facilitative (*e.g.,* amounts relating to determining the value of the target, drafting transactional documents, or conveying property between the parties). Under this bright line rule, an amount that does not facilitate the acquisition is not required to be capitalized under this section. The proposed regulations do not affect the treatment of start-up expenditures under section 195. The IRS and Treasury Department are considering the application of these bright line standards to tangible assets acquired as part of a trade or business in order to provide a single administrable standard in these transactions. The IRS and Treasury Department request comments on whether the bright line standard provided in the proposed regulations is administrable and whether there are other bright line standards that can be applied in this area.

The proposed regulations provide that a success-based fee is an amount paid to facilitate the acquisition except to the extent that evidence clearly demonstrates that some portion of the amount is allocable to activities that do not facilitate the acquisition. The IRS and Treasury Department request comments on the treatment of success-based fees.

The IRS and Treasury Department stress that section 6001 of the Code requires taxpayers to maintain sufficient records to support a position claimed on the taxpayer's return. Thus, taxpayers must maintain records adequate to document that amounts relate to activities performed prior to the bright line date. Comments are requested on the types of records that are available in the context of an acquisition of a trade or business and how these records might be utilized to administer the bright line rule.

C. Hostile Takeover Defense Costs

The proposed regulations provide that transaction costs incurred by a taxpayer to defend against a hostile takeover of the taxpayer's stock do not facilitate the acquisition and therefore are not required to be capitalized. See *A.E. Staley Mfg. Co.* v. *Commissioner,* 119 F.3d 482 (7th Cir. 1997). The proposed regulations recognize, however, that an initially hostile acquisition attempt may eventually become friendly. In such a case, the rules require the taxpayer to bifurcate its costs between those incurred to defend against the acquisition attempt at the time the attempt was hostile and those incurred to facilitate the friendly acquisition. Capitalization is required for costs incurred to facilitate the friendly acquisition. The IRS and Treasury Department request comments on rules that might be applied to determine the point at which a hostile acquisition attempt becomes friendly.

Some costs may be viewed both as costs to defend against a hostile acquisition and as costs to facilitate another capital transaction. For example, a taxpayer may attempt to thwart a hostile acquisition by merging with a white knight, recapitalizing, or issuing stock purchase rights to existing shareholders. The proposed regulations require capitalization of such costs,

regardless of whether the taxpayer's purpose in incurring such costs was solely to defend against a hostile acquisition.

D. Simplifying Conventions Applicable to Transaction Costs

1. Salaries and Overhead

Much of the recent debate surrounding section 263(a) has focused on the extent to which capitalization is required for employee compensation and overhead costs that are related to the acquisition, creation, or enhancement of an asset. Generally, courts and the Service have required capitalization of such costs where the facts show that the costs clearly are allocable to a particular asset. See *Commissioner* v. *Idaho Power Co.,* 418 U.S. 1 (1973) (requiring capitalization of depreciation on equipment used to construct capital assets and noting that wages, when paid in connection with the construction or acquisition of a capital asset, must be capitalized and amortized over the life of the capital asset); *Louisville and N.R. Co.* v. *Commissioner,* 641 F.2d 435 (6th Cir. 1981) (requiring capitalization of overhead costs associated with building and rebuilding railroad freight cars); *Lychuk* v. *Commissioner,* 116 T.C. 374 (2001) (requiring capitalization of employee compensation where employees spent a significant portion of their time working on acquisitions of installment obligations); Rev. Rul. 73–580 (1973–2 C.B. 86) (requiring capitalization of employee compensation reasonably attributable to services performed in connection with corporate mergers and acquisitions).

In the context of intangible assets, some courts have allowed taxpayers to deduct employee compensation and overhead where there is only an indirect nexus between the intangible asset and the compensation or overhead. See *Wells Fargo* v. *Commissioner,* 224 F.3d 874 (8th Cir. 2000) (deduction allowed for officers' salaries allocable to work performed by corporate officers in negotiating a merger transaction because the salaries ''originated from the employment relationship between the taxpayer and its officers'' and not from the merger transaction); *PNC Bancorp* v. *Commissioner,* 212 F.3d 822 (3rd Cir. 2000) (deduction allowed for compensation and other costs of originating loans to borrowers); *Lychuk* v. *Commissioner,* 116 T.C. 374 (2001) (capitalization not required for overhead costs allocable to the taxpayer's acquisition of installment loans because the overhead did not originate in the process of acquiring the installment notes, and would have been incurred even if the taxpayer did not engage in such acquisition).

To resolve much of this controversy, and to eliminate the burden on taxpayers of allocating certain transaction costs among various intangible assets, the proposed regulations provide a simplifying assumption that employee compensation and overhead costs do not facilitate the acquisition, creation or enhancement of an intangible asset. The rule applies regardless of the percentage of the employee's time that is allocable to capital transactions. For example, capitalization is not required for compensation paid to an employee of the taxpayer who works full time on merger transactions.

The proposed regulations modify the rule proposed in the ANPRM by extending the scope of the rule to all employee compensation, whether paid in the form of salary, bonus, or commission. Commentators noted that bonuses are rarely paid with respect to one particular transaction, and a requirement to capitalize bonuses would not result in simplification given the necessity of allocating bonuses among capital transactions. In the case of overhead, the proposed regulations modify the rule proposed in the ANPRM by extending the scope of the rule to variable overhead. The IRS and Treasury Department have concluded that the clearer reflection of income that might be gained by requiring capitalization of employee compensation and overhead does not offset the administrative and record keeping burdens imposed by a capitalization requirement.

These simplifying conventions are intended to be rules of administrative convenience, and not substantive rules of law. Accordingly, in the case of employee compensation and overhead, the IRS and Treasury Department are considering limiting the application of the simplifying conventions to taxpayers that deduct these costs for financial accounting purposes. Under this approach, the simplifying conventions for employee compensation and overhead would not apply to taxpayers that capitalize these costs for financial accounting purposes. A book-tax conformity rule would recognize that there is no simplification gained by allowing a deduction for employee compensation and overhead where the taxpayer allocates these costs to intangible assets and capitalizes them for financial accounting purposes. The IRS and Treasury Department anticipate that any such book-tax conformity rule would not apply to de minimis costs.

The proposed regulations do not presently include a book-tax conformity rule. However, the IRS and Treasury Department request comments on whether the final regulations should apply a book-tax conformity rule to employee compensation and overhead.

2. De Minimis Costs

The proposed regulations provide that de minimis transaction costs do not facilitate a capital transaction and therefore are not required to be capitalized. The rule defines de minimis costs as costs that do not exceed $5,000. The IRS and Treasury Department considered whether the de minimis rule should be based on the taxpayer's gross receipts, total assets, or some other variable benchmark, rather than a fixed amount. The IRS and Treasury Department decided not to adopt such an approach because of concern that it would add complexity and create administrability issues, particularly where the benchmark amount changes as a result of amended returns or audit adjustments.

The proposed regulations clarify that the de minimis rule applies on a transaction-by-transaction basis. As demonstrated by examples in the proposed regulations, a single transaction may involve the acquisition of multiple intangible assets. The proposed regulations also clarify that if transaction costs (other than compensation and overhead) exceed $5,000, no portion of the costs is considered de minimis under the rule. Thus, all of the costs (not just the cost in excess of $5,000) must be capitalized. The IRS and Treasury Department request comments on whether additional rules are required to prevent taxpayers from improperly fragmenting agreements or transactions to take advantage of the de minimis rules contained in the proposed regulations.

The proposed regulations contain rules for aggregating costs allocable to a transaction. While taxpayers generally must account for the actual costs allocable to each transaction, the proposed regulations permit taxpayers to determine the applicability of the de minimis rules by computing the average transaction cost for a pool of similar transactions. The IRS and Treasury Department recognize that this average cost pooling method could result in a skewed average cost where several unusually large transactions occur during the year and request comments on how to address such transactions. If the final regulations ultimately provide this pooling mechanism for computing average transaction costs, taxpayers are reminded of their obligations under

section 6001 of the Code to maintain such records as are sufficient to establish the amount of any deductions claimed as de minimis costs.

The proposed regulations provide that the de minimis rule does not apply to commissions paid to acquire or create certain financial interests. Accordingly, taxpayers must capitalize such commissions. The IRS and Treasury Department note that the treatment of commissions is well-settled under existing law. See *Helvering* v. *Winmill,* 305 U.S. 79 (1938); § 1.263(a)–2(e). In addition, because commissions generally are traceable to a particular acquisition or creation, no simplification is gained by treating commissions as de minimis costs.

3. Regular and Recurring Costs

The ANPRM requested public comment on whether the recurring or nonrecurring nature of a transaction is an appropriate consideration in determining whether an expenditure incurred to facilitate a transaction must be capitalized under section 263(a) and, if so, what criteria should be applied in distinguishing between recurring and nonrecurring transactions. The IRS and Treasury Department considered the public comments and concluded that a regular and recurring rule would likely be too vague to be administrable. The IRS and Treasury Department believe that the simplifying conventions for employee compensation, overhead, and de minimis costs address the types of regular and recurring costs that are most appropriately excluded from capitalization. Thus, a regular and recurring rule is not provided in the proposed regulations.

VI. 12-Month Rule

A. In General

The existing regulations under sections 263(a), 446, and 461 require taxpayers to capitalize expenditures that create an asset having a useful life substantially beyond the close of the taxable year. See §§ 1.263(a)–2(a), 1.446–1(c)(1)(ii), and 1.461–1(a)(2)(i). In determining whether an asset has a useful life substantially beyond the close of the taxable year, some courts have adopted a ''one-year'' rule. *U.S. Freightways Corp.* v. *Commissioner,* 270 F.3d 1137 (7th Cir. 2001), rev'g 113 T.C. 329 (1999); *Zaninovich* v. *Commissioner,* 616 F.2d 429 (9th Cir. 1980). Under this rule, an expenditure may be deducted in the year it is incurred, as long as the benefit resulting from the expenditure does not have a useful life that extends beyond one year.

The IRS and Treasury Department think that a ''12-month'' rule would help to reduce the administrative and compliance costs inherent in applying section 263(a) to amounts paid to create or enhance intangible assets. Accordingly, under the proposed regulations, certain amounts (including transaction costs) paid to create or enhance intangible rights or benefits for the taxpayer that do not extend beyond the period prescribed by the 12-month rule are treated as having a useful life that does not extend substantially beyond the close of the taxable year. Thus, such amounts are not required to be capitalized under the proposed regulations. Amounts paid to create rights or benefits that do extend beyond the period prescribed by the 12-month rule must be capitalized in full; no portion of these amounts is considered to come within the scope of the 12-month rule on the ground that such portion is allocable to rights or benefits that will expire within the period prescribed by the 12-month rule.

The 12-month rule does not apply to amounts paid to create or enhance financial interests or to amounts paid to create or enhance self-created amortizable section 197 intangibles (as described in section 197(c)(2)(A)). Application of the 12-month rule to self-created amortizable section 197 intangibles, but not to amortizable section 197 intangibles acquired from another person, would result in inconsistent treatment of amortizable section 197 intangibles. The IRS and Treasury Department are reluctant to treat acquired amortizable section 197 intangibles different from self-created amortizable section 197 intangibles.

The proposed regulations clarify the interaction of the 12-month rule with the economic performance rules contained in section 461(h) of the Code. Nothing in these proposed regulations is intended to change the application of section 461 of the Code, including the application of the economic performance rules. In the case of a taxpayer using the accrual method of accounting, section 461 requires that an item be incurred before it is taken into account through capitalization or deduction. For example, under the economic performance rules, amounts prepaid for goods or services generally are not incurred, and therefore may not be taken into account by an accrual method taxpayer, until such time as the goods or services are provided to the taxpayer (subject to the recurring item exception). § 1.461–4(d)(2)(i). Thus, the 12-month rule provided by the regulations does not permit an accrual method taxpayer to deduct an amount prepaid for goods or services where the amount has not been incurred under section 461 (for example, where the taxpayer can not reasonably expect that it will be provided goods or services within 3½ months after the date of payment). The proposed regulations contain examples demonstrating the interaction of the 12-month rule with the economic performance rules of section 461(h).

B. Application of 12-Month Rule to Contract Terminations

The proposed regulations clarify that, for purposes of applying the 12-month rule, an amount paid to terminate a contract described in Part IV.F. of this preamble prior to its expiration date creates a benefit for the taxpayer equal to the unexpired term of the agreement as of the date of termination. Thus, for example, if a lessor incurs costs to terminate a lease with an unexpired term of 10 months, the 12-month rule will apply to those costs.

C. Rights of Indefinite Duration

The 12-month rule does not apply to contracts or other rights that have an indefinite duration. Rights of indefinite duration include rights that have no period of duration fixed by agreement or law or that are not based on a period of time, but are based on a right to provide or receive a fixed amount of goods or services. The IRS and Treasury Department believe that, in many cases, application of the 12-month rule to contracts or other rights that are not based on a period of time would necessitate speculation regarding whether the contract or other right could reasonably be expected to be completed within 12 months. In addition, the IRS and Treasury Department believe that amounts paid to create or enhance such rights should be capitalized and recovered through amortization, through a loss deduction upon abandonment of the right, or through basis recovery upon sale.

Further, § 1.167(a)–14(c) of the regulations provides rules for amortizing costs to obtain a right to receive a fixed amount of property or services. Under these rules, the basis of such right is amortized for each taxable year by multiplying the basis of the right by a fraction, the numerator of which is the amount of tangible property or services received during the taxable year and the denominator of which is the total amount of tangible property or services received or to be received under the terms of the contract. The IRS and Treasury Department believe that these amortization rules provide a reasonable recovery method for many

rights that are required to be capitalized under these regulations, and serve as a sufficient substitute for a 12-month rule.

D. Rights That Are Renewable

The proposed regulations provide rules for determining whether renewal periods should be taken into account in determining the treatment of a renewable contract with an initial term that falls within the scope of the 12-month rule. The proposed regulations provide that renewal periods are to be taken into account if there is a ''reasonable expectancy of renewal.'' Some commentators suggested that renewals should be taken into account only if renewal is ''substantially likely'' or ''economically compelled.'' The IRS and Treasury Department believe that the reasonable expectancy of renewal test is a more appropriate standard, and note that this standard is consistent with the standard provided in § 1.167(a)–14(c)(3) of the regulations for purposes of determining the amortization period for certain contract rights.

Whether a reasonable expectancy of renewal exists depends on all relevant facts and circumstances in existence at the time the contract or other right is created. The fact that a particular contract is ultimately renewed is not relevant in determining whether a reasonable expectancy of renewal exists at the time the parties entered into the contract. The proposed regulations provide factors that are significant in determining whether a reasonable expectancy of renewal exists.

The IRS and Treasury Department are considering rules that permit taxpayers who create, renew, or enhance a certain minimum number of similar rights or benefits during a taxable year to pool those transactions for purposes of applying the 12-month rule. The proposed regulations provide a broad outline of one pooling method under consideration by the IRS and Treasury Department. This method allows taxpayers to apply the reasonable expectancy of renewal test to pools of similar rights or benefits. Under this proposed method, taxpayers are required to capitalize an expenditure to obtain a right or benefit by reference to the reasonable expectancy of renewal for the pool. The proposed regulations provide that, if less than 20 percent of the rights or benefits in the pool are reasonably expected to be renewed, the taxpayer need not capitalize any costs for the rights or benefits in the pool. On the other hand, if more than 80 percent of the rights or benefits in the pool are reasonably expected to be renewed, the taxpayer must capitalize all costs (other than de minimis costs described in Parts IV.E. and V.D.2. of this preamble) for the rights or benefits in the pool. If 20 percent or more but 80 percent or less of the rights or benefits in the pool are reasonably expected to be renewed, the taxpayer must capitalize a percentage of costs corresponding to the percentage of rights or benefits in the pool that are reasonably expected to be renewed. The proposed regulations provide that taxpayers may define a pool of similar contracts for this purpose using any reasonable method. A reasonable method would include a definition of a pool based on the type of customer and the type of property or service provided.

The IRS and Treasury Department stress that the pooling methods outlined in these proposed regulations are not effective unless these pooling methods are ultimately promulgated in final regulations. Accordingly, these proposed regulations do not provide authority for taxpayers to adopt the pooling methods outlined herein. Public comments are requested regarding the following specific issues related to pooling (both with respect to pools established for purposes of applying the 12-month rule and with respect to pools established for purposes of applying the de minimis rules):

(a) Would pooling be a useful simplification measure for taxpayers?

(b) Should a pooling method be provided in final regulations, or are rules governing pooling more appropriately issued in the form of industry-specific guidance or other non-regulatory guidance (*e.g.*, revenue procedure)?

(c) Should a pooling method be treated as a method of accounting under section 446?

(d) Should the regulations define what constitutes ''similar'' contract rights or other rights for purposes of defining a pool? If so, what factors should be considered in determining whether rights are similar?

(e) Should the regulations require the use of the same pools for depreciation purposes as are used for purposes of determining the amount capitalized under the regulations? Is additional guidance necessary to clarify the interaction of the pooling rules with the rules in section 167 and § 1.167(a)–8?

(f) The IRS and Treasury Department intend to require a minimum number of similar transactions that a taxpayer must engage in during a taxable year in order to be eligible to apply the pooling method. Comments are requested regarding what this minimum number of similar transactions should be.

VII. Safe Harbor Amortization

A. In General

The proposed regulations amend § 1.167(a)–3 to provide a 15-year safe harbor amortization period for certain created or enhanced intangibles that do not have readily ascertainable useful lives. For example, amounts paid to obtain certain memberships or privileges of indefinite duration would be eligible for the safe harbor amortization provision. Under the safe harbor, amortization is determined using a straight-line method with no salvage value.

The prescribed 15-year period is consistent with the amortization period prescribed by section 197. Many commentators suggested that any safe harbor amortization period should be no longer than 60 months, and noted that a 60-month amortization period is consistent with amortization periods prescribed by sections 195 (start up expenditures), 248 (organizational expenditures), and 709 (partnership organization and syndication fees) of the Code. The IRS and Treasury Department are concerned that an amortization period shorter than 15 years would create tension with section 197, and might encourage attempts to circumvent the provisions of section 197.

The safe harbor amortization period does not apply to intangibles acquired from another party or to created financial interests. These intangibles are generally not amortizable, are amortizable under section 197, or are amortizable over a period prescribed by other provisions of the Code or regulations.

The safe harbor amortization period also does not apply to created intangibles that have readily ascertainable useful lives on which amortization can be based. Existing law permits taxpayers to amortize intangible assets with reasonably estimable useful lives. § 1.167(a)–3. For instance, prepaid expenses, contracts with a fixed duration, and certain contract terminations have readily ascertainable useful lives on which amortization can be based. Prepaid expenses are amortized over the period covered by the prepayment. Amounts paid to induce another to enter into a contract with a fixed duration are amortized over the duration of the contract. Amounts paid by a lessor to terminate a lease contract are amortized over the remaining term of the lease. *Peerless Weighing and Vending Machine Corp.* v. *Commissioner*, 52 T.C. 850, 852 (1969).

The safe harbor amortization period does not overrule existing amortization periods prescribed or prohibited by the

Code, regulations, or other guidance. See, *e.g.*, section 167(f)(1)(A) (prescribing a 36-month life for certain computer software); 171 (prescribing rules for determining the amortization period for bond premium); 178 (prescribing the amortization period for costs to acquire a lease); 197 (prescribing a 15-year life for certain intangible assets); § 1.167(a)–14(d)(1) (prescribing a 108-month useful life for mortgage servicing rights).

Finally, the 15-year safe harbor does not apply to amounts paid in connection with real property owned by another. As discussed in Part IV.G. of this preamble, the proposed regulations provide a 25-year safe harbor amortization period for those amounts.

B. Restructurings, Reorganizations and Transactions Involving the Acquisition of Capital

The proposed regulations do not provide safe harbor amortization for capitalized transaction costs that facilitate a stock issuance or other transaction involving the acquisition of capital. The regulations maintain the historical treatment of stock issuance costs and costs that facilitate a recapitalization. Historically, such costs have been treated as a reduction of capital proceeds from the transaction, and not as a separate intangible asset that is amortizable over a useful life. See Rev. Rul. 69–330 (1969–1 C.B. 51); *Affiliated Capital Corp.* v. *Commissioner*, 88 T.C. 1157 (1987).

In addition, the proposed regulations do not allow safe harbor amortization for capitalized transaction costs that facilitate a restructuring or reorganization of a business entity. As discussed below, comments are requested regarding the appropriateness of applying the safe harbor amortization period to certain of these costs.

1. Acquirer's Costs in a Taxable Acquisition

The safe harbor amortization provisions do not apply to transaction costs properly capitalized by an acquirer to facilitate the acquisition of the stock or assets of a target corporation in a taxable acquisition. In such a case, existing law provides that transaction costs are properly capitalized to the basis of the stock or assets acquired. See *Woodward* v. *Commissioner*, 397 U.S. 572 (1970). In the case of a stock acquisition, the capitalized transaction costs are not amortizable, but offset any subsequent gain or loss realized on the disposition of the stock. In the case of an asset acquisition, the capitalized transaction costs generally may be recovered as part of the recovery of the basis of the assets.

2. Target's Costs in a Taxable Acquisition

The safe harbor amortization rules also do not apply to transaction costs incurred by a target to facilitate the acquisition of its assets by an acquirer in a taxable transaction. In such a case, the transaction costs generally are an offset against any gain or loss realized by the target on the disposition of its assets.

While the proposed regulations do not allow safe harbor amortization of transaction costs capitalized by a target to facilitate the acquisition of its stock by an acquirer in a taxable transaction, the IRS and Treasury Department request comments on whether safe harbor amortization should be allowed in such a transaction. Existing law provides no useful life for these capitalized costs, and little guidance concerning when taxpayers may recover these costs. See, e.g., *INDOPCO, Inc.* v. *Commissioner,* 503 U.S. 79, 84 (1992) (indicating that where no specific asset or useful life can be ascertained, a capitalized cost is deducted upon dissolution of the enterprise). The IRS and Treasury Department believe that the application of a safe harbor amortization period to such costs might help to eliminate much of the current controversy that exists concerning the proper treatment of these costs.

3. Acquirer's and Target's Costs in a Tax-Free Acquisition

In determining whether the safe harbor amortization provision should apply to transaction costs that facilitate a tax-free acquisition, threshold issues exist regarding the proper treatment of capitalized costs. Comments are requested concerning the following issues:

(a) Should an acquirer's capitalized transaction costs in a tax-free acquisition of a target be added to the acquirer's basis in the target's stock or assets acquired? If so, should amortization of such costs under the safe harbor amortization provision be prohibited on the ground that the capitalized costs are properly recovered as part of the recovery of the basis of the assets (in the case of a transaction treated as an asset acquisition) or upon the disposition of the stock (in the case of a transaction treated as a stock acquisition)? On the other hand, if the carryover basis rules of section 362(b) of the Code prohibit the acquirer from increasing its basis in the acquired stock or assets by the amount of the capitalized transaction costs, should the capitalized transaction costs be viewed as a separate intangible asset with an indefinite useful life?

(b) Should a target's capitalized transaction costs in a tax-free acquisition that is treated as a stock acquisition be viewed as a separate intangible asset with an indefinite useful life?

(c) Should a target's capitalized transaction costs in a tax-free acquisition that is treated as an asset acquisition be viewed as an intangible asset with an indefinite useful life, or are such costs better viewed as a reduction of target's amount realized or as an increase in target's basis in its assets immediately prior to the acquisition?

(d) If an acquirer's (or a target's) capitalized transaction costs are viewed as a separate intangible asset with an indefinite useful life, should amortization be permitted for such costs under the safe harbor amortization provision, or does section 197(e)(8) of the Code evince a Congressional intent to prohibit any amortization of transaction costs capitalized in a tax-free reorganization?

(e) To what extent should the safe harbor amortization provision apply to capitalized transaction costs that facilitate tax-free transactions other than the acquisitive transactions discussed above (*e.g.*, transactions under sections 351 and 355)?

4. Costs to Facilitate a Borrowing

Existing law requires that capitalized transaction costs incurred to borrow money (debt issuance costs) be deducted over the term of the debt. For example, see *Enoch* v. *Commissioner,* 57 T.C. 781 (1972). The regulations do not propose to change this treatment. Accordingly, the safe harbor amortization provision does not apply to capitalized debt issuance costs. However, in order to conform the rules for debt issuance costs with the rules for original issue discount, the proposed regulations generally require the use of a constant yield method to determine how much of these costs are deductible each year by the borrower. See proposed § 1.446–5.

VIII. Computer Software Issues

The ANPRM requested public comment on the rules and principles that should apply in distinguishing acquired software from developed software. Under existing law, costs to acquire software are appropriately capitalized and may be amortized over 36 months or, in some cases, 15 years. Sections 167(f) and 197(d)(1)(C)(iii). Costs to develop software, on the other

hand, may be deducted as incurred in accordance with Rev. Proc. 2000–50 (2000–2 C.B. 601).

The determination of whether software is developed or acquired is a factual inquiry that depends on an analysis of the activities performed by the various parties to the software transaction. While a few commentators identified factors that help to distinguish acquired software from developed software, commentators also suggested that this issue should be addressed in separate guidance, and not in the proposed regulations.

The IRS and Treasury Department agree that the determination of whether computer software is acquired or developed raises issues that are beyond the scope of these proposed regulations. Accordingly, the proposed regulations do not provide rules for distinguishing acquired software from developed software. These issues will be addressed in subsequent guidance.

Many commentators suggested that the proposed regulations should provide guidance concerning the treatment of costs to implement acquired software. For example, commentators noted that issues often arise regarding the extent to which section 263(a) requires capitalization of costs to implement Enterprise Resource Planning (ERP) software. ERP software is an enterprise-wide database software system that integrates business functions such as financial accounting, sales and distribution, materials management, and production planning. Implementation of an ERP system may take several years and generally involves various categories of costs, including (1) costs to acquire the ERP software package from the vendor, (2) costs to install the acquired ERP software on the taxpayer's computer hardware and to configure the software to the taxpayer's needs through the use of the options and templates embedded in the software, (3) software development costs, and (4) costs to train employees in the use of the new software.

The proposed regulations do not specifically address the treatment of ERP software. However, the IRS and Treasury Department expect that the final regulations will address these costs and, subject to the simplifying conventions provided in the regulations for employee compensation, overhead, and de minimis transaction costs, will treat such costs in a manner consistent with the treatment prescribed in Private Letter Ruling 200236028 (June 4, 2002) (available in the IRS Freedom of Information Act Reading Room, 1111 Constitution Avenue, NW., Washington, DC 20224). The IRS and Treasury Department request comments on the treatment of ERP implementation costs under the principles contained in these proposed regulations.

IX. Proposed Effective Date

These regulations are proposed to be applicable on the date on which the final regulations are published in the **Federal Register**. The regulations provide rules applicable to taxpayers that seek to change a method of accounting to comply with the rules contained in the final regulations. Taxpayers may not change a method of accounting in reliance upon the rules contained in these proposed regulations until the rules are published as final regulations in the **Federal Register**.

Upon publication of the final regulations, taxpayers must follow the applicable procedures for obtaining the Commissioner's automatic consent to a change in accounting method. The proposed regulations provide that any change in a method of accounting is made using an adjustment under section 481(a), but that such adjustment is determined by taking into account only amounts paid or incurred on or after the date the final regulations are published in the **Federal Register**.

The IRS and Treasury Department are concerned about the potential administrative burden on taxpayers and the IRS that may result from a section 481(a) adjustment that takes into account amounts paid or incurred prior to the effective date of the regulations. Given the potential for section 481(a) adjustments that originate many years prior to the effective date of the regulations, the IRS and Treasury Department question whether adequate documentation is available to compute the adjustment with reasonable accuracy.

The IRS and Treasury Department request comments on whether there are circumstances in which it is appropriate to permit a change in method of accounting to be made using an adjustment under section 481(a) that takes into account amounts paid or incurred prior to the effective date of the regulations. If there are such circumstances, comments are requested on the appropriate number of taxable years prior to the effective date of the regulations that taxpayers should be permitted to look back for purposes of computing the adjustment. Finally, the IRS and Treasury Department request comments on any additional terms and conditions for changes in methods of accounting that would be helpful to taxpayers in adopting the rules contained in these regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 22, 2003, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 1, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Andrew J. Keyso of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART I—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.167(a)–3 is amended by:

1. Adding a paragraph designation and heading to the undesignated paragraph.

2. Adding paragraph (b).

The additions read as follows:

§ 1.167(a)–3 Intangibles.

(a) *In general.* * * *

(b) *Safe harbor amortization for certain intangible assets*—(1) *Amortization period.* For purposes of determining the depreciation allowance referred to in paragraph (a) of this section, a taxpayer may treat an intangible asset as having a useful life equal to 15 years unless—

(i) An amortization period for the intangible asset is specifically prescribed or prohibited by the Internal Revenue Code, regulations, or other published guidance;

(ii) The intangible asset is described in § 1.263(a)–4(c) (relating to intangibles acquired from another person) or § 1.263(a)–4(d)(2) (relating to created financial interests);

(iii) The intangible asset has a useful life that is readily ascertainable; or

(iv) The intangible asset is described in § 1.263(a)–4(d)(8) (relating to certain benefits arising from the provision, production, or improvement of real property), in which case the taxpayer may treat the intangible asset as having a useful life equal to 25 years.

(2) *Applicability to restructurings, reorganizations, and acquisitions of capital.* The safe harbor amortization period provided by paragraph (b)(1) of this section does not apply to an amount required to be capitalized by § 1.263(a)–4(b)(1)(iii) (relating to amounts paid to facilitate a restructuring, reorganization or transaction involving the acquisition of capital).

(3) *Depreciation method.* A taxpayer that determines its depreciation allowance for an intangible asset using the 15-year amortization period prescribed by paragraph (b)(1) of this section (or the 25-year amortization period in the case of an intangible asset described in § 1.263(a)–4(d)(8)) must determine the allowance by amortizing the basis of the intangible asset (as determined under section 167(c) and without regard to salvage value) ratably over the amortization period beginning on the first day of the month in which the intangible asset is placed in service by the taxpayer. The intangible asset is not eligible for amortization in the month of disposition.

Par. 3. Section 1.263(a)–4 is added to read as follows:

§ 1.263(a)–4 Amounts paid to acquire, create, or enhance intangible assets.

(a) *Overview.* This section provides rules for applying section 263(a) to amounts paid to acquire, create, or enhance intangible assets. Except to the extent provided in paragraph (d)(8) of this section, the rules provided by this section do not apply to amounts paid to acquire, create, or enhance tangible assets. Paragraph (b) of this section provides a general principle of capitalization. Paragraphs (c) and (d) of this section identify intangibles for which capitalization is specifically required under the general principle. Paragraph (e) of this section provides rules for determining the extent to which taxpayers must capitalize transaction costs. Paragraph (f) of this section provides a 12-month rule intended to simplify the application of the general principle to certain payments that create benefits of a brief duration. Additional rules and examples relating to these provisions are provided in paragraphs (g) through (n) of this section. The applicability date of the rules in this section is provided in paragraph (o) of this section.

(b) *Capitalization of intangible assets*—(1) *In general.* Except as otherwise provided in chapter 1 of the Internal Revenue Code, a taxpayer must capitalize—

(i) An amount paid to acquire, create, or enhance an intangible asset (within the meaning of paragraph (b)(2) of this section);

(ii) An amount paid to facilitate (within the meaning of paragraph (e)(1) of this section) the acquisition, creation, or enhancement of an intangible asset; and

(iii) An amount paid to facilitate (within the meaning of paragraph (e)(1) of this section) a restructuring or reorganization of a business entity or a transaction involving the acquisition of capital, including a stock issuance, borrowing, or recapitalization.

(2) *Intangible asset*—(i) *In general.* For purposes of this section, the term *intangible asset* means—

(A) An intangible described in paragraph (c) of this section (relating to acquired intangibles);

(B) An intangible described in paragraph (d) of this section (relating to certain created or enhanced intangibles);

(C) A separate and distinct intangible asset within the meaning of paragraph (b)(3) of this section; or

(D) A future benefit identified in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) as an intangible asset for which capitalization is required under this section.

(ii) *Published guidance.* Any published guidance identifying a future benefit as an intangible asset for which capitalization is required under paragraph (b)(2)(i)(D) of this section applies only to amounts paid on or after the date of publication of the guidance.

(3) *Separate and distinct intangible asset*—(i) *Definition.* The term *separate and distinct intangible asset* means a property interest of ascertainable and measurable value in money's worth that is subject to protection under applicable state or federal law and the possession and control of which is intrinsically capable of being sold, transferred, or pledged (ignoring any restrictions imposed on assignability). The determination of whether an amount is paid to acquire, create, or enhance a separate and distinct intangible asset is made as of the taxable year during which the payment is made.

(ii) *Creation or termination of contract rights.* Amounts paid to another party to create or originate an agreement with that party that produces rights or benefits for the taxpayer do not create a separate and distinct intangible asset within the meaning of this paragraph (b)(3). Further, amounts paid to another party to terminate an agreement with that party do not create a separate and distinct intangible asset within the meaning of this paragraph (b)(3). See paragraphs (d)(2), (6) and (7) of this section for rules that specifically require capitalization of amounts paid to create or terminate certain agreements. See paragraph (e)(1)(ii) of this section for rules relating to the treatment of certain termination payments that facilitate another transaction for which capitalization is required under this section.

(c) *Acquired intangibles*—(1) *In general.* A taxpayer must capitalize amounts paid to another party to acquire an intangible from that party in a purchase or similar transaction. Intangibles within the scope of this paragraph (c) include, but are not limited to, the following (if acquired from another party in a purchase or similar transaction):

(i) An ownership interest in a corporation, partnership, trust, estate, limited liability company, or other similar entity.

(ii) A debt instrument, deposit, stripped bond, stripped coupon (including a servicing right treated for federal income tax purposes as a stripped coupon), regular interest in a REMIC or FASIT, or any other intangible treated as debt for federal income tax purposes.

(iii) A financial instrument, including, but not limited to —

(A) A letter of credit;

(B) A credit card agreement;

(C) A notional principal contract;

(D) A foreign currency contract;

(E) A futures contract;

(F) A forward contract (including an agreement under which the taxpayer has the right and obligation to provide or to acquire property (or to be compensated for such property));

(G) An option (including an agreement under which the taxpayer has the right to provide or to acquire property (or to be compensated for such property)); and

(H) Any other financial derivative.

(iv) An endowment contract, annuity contract, or insurance contract that has or may have cash value.

(v) Non-functional currency.

(vi) A lease contract.

(vii) A patent or copyright.

(viii) A franchise, trademark or tradename (as defined in § 1.197–2(b)(10)).

(ix) An assembled workforce (as defined in § 1.197–2(b)(3)).

(x) Goodwill (as defined in § 1.197–2(b)(1)) or going concern value (as defined in § 1.197–2(b)(2)).

(xi) A customer list.

(xii) A servicing right (for example, a mortgage servicing right).

(xiii) A customer-based intangible (as defined in § 1.197–2(b)(6)) or supplier-based intangible (as defined in § 1.197–2(b)(7)).

(xiv) Computer software.

(2) *Readily available software.* An amount paid to obtain a nonexclusive license for software that is (or has been) readily available to the general public on similar terms and has not been substantially modified (within the meaning of § 1.197–2(c)(4)) is treated for purposes of this paragraph (c) as an amount paid to another party to acquire an intangible from that party in a purchase or similar transaction.

(3) *Intangibles acquired from an employee.* Amounts paid to an employee to acquire an intangible from that employee are not required to be capitalized under this section if the amounts are treated as compensation for personal services includible in the employee's income under section 61 or 83. For purposes of this section, whether an individual is an employee is determined in accordance with the rules contained in section 3401(c) and the regulations thereunder.

(4) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1. Financial instrument. X corporation, a commercial bank, purchases a portfolio of existing loans from Y corporation, another financial institution. X pays Y $2,000,000 in exchange for the portfolio. The $2,000,000 paid to Y constitutes an amount paid to acquire an intangible from Y and must be capitalized.

Example 2. Option. W corporation owns all of the outstanding stock of X corporation. Y corporation holds a call option entitling it to purchase from W all of the outstanding stock of X at a certain price per share. Z corporation acquires the call option from Y in exchange for $5,000,000. The $5,000,000 paid to Y constitutes an amount paid to acquire an intangible from Y and must be capitalized.

Example 3. Ownership interest in a corporation. Same as *Example 2,* but assume Z exercises its option and purchases from W all of the outstanding stock of X in exchange for $100,000,000. The $100,000,000 paid to W constitutes an amount paid to acquire an intangible from W and must be capitalized.

Example 4. Customer list. N corporation, a retailer, sells its products exclusively through its catalog and mail order system. N purchases a customer list from R corporation. N pays R $100,000 in exchange for the customer list. The $100,000 paid to R constitutes an amount paid to acquire an intangible from R and must be capitalized.

Example 5. Lease. V corporation seeks to lease commercial property in a prominent downtown location of city R. V identifies desirable property in city R that is currently under lease by X corporation to W corporation under a 10-year assignable lease. V pays W $50,000 to acquire the lease and relocates its operations from city O to city R. The $50,000 paid to W constitutes an amount paid to W to acquire an intangible from W and must be capitalized.

Example 6. Goodwill. Z corporation pays W corporation $10,000,000 to purchase all of the assets of W in a transaction that constitutes an applicable asset acquisition under section 1060(c). Of the $10,000,000 consideration paid in the transaction, $9,000,000 is allocable to tangible assets purchased from W and $1,000,000 is allocable to goodwill. The $1,000,000 allocable to goodwill constitutes an amount paid to W to acquire intangibles from W and must be capitalized.

(d) *Created intangibles*—(1) *In general.* Except as provided in paragraph (f) of this section (relating to the 12-month rule), a taxpayer must capitalize amounts paid to create or enhance an intangible described in this paragraph (d).

(2) *Financial interests*—(i) *In general.* A taxpayer must capitalize amounts paid to another party to create or originate with that party any of the following financial interests, whether or not the interest is regularly traded on an established market:

(A) An ownership interest in a corporation, partnership, trust, estate, limited liability company, or other similar entity.

(B) A debt instrument, deposit, stripped bond, stripped coupon (including a servicing right treated for federal income tax purposes as a stripped coupon), regular interest in a REMIC or FASIT, or any other intangible treated as debt for federal income tax purposes.

(C) A financial instrument, including, but not limited to—

(*1*) A letter of credit;

(*2*) A credit card agreement;

(*3*) A notional principal contract;

(*4*) A foreign currency contract;

(*5*) A futures contract;

(*6*) A forward contract (including an agreement under which the taxpayer has the right and obligation to provide or to acquire property (or to be compensated for such property));

(*7*) An option (including an agreement under which the taxpayer has the right to provide or to acquire property (or to be compensated for such property)); and

(*8*) Any other financial derivative.

(D) An endowment contract, annuity contract, or insurance contract that has or may have cash value.

(E) Non-functional currency.

(ii) *Exception for current and prior sales.* An amount is not required to be capitalized under paragraph (d)(2)(i)(C)(*6*) or (*7*) of this section if the amount is allocable to property required to be provided or acquired by the taxpayer prior to the end of the taxable year in which the amount is paid.

(iii) *Coordination with other provisions of this paragraph (d).* An amount described in this paragraph (d)(2) that is also described elsewhere in paragraph (d) of this section is treated as described only in this paragraph (d)(2).

(iv) *Examples.* The following examples illustrate the rules of this paragraph (d)(2):

Example 1. Loan. X corporation, a commercial bank, makes a loan to A in the

principal amount of $250,000. Under paragraph (d)(2)(i)(B) of this section, the $250,000 principal amount of the loan paid to A constitutes an amount paid to another party to create a financial instrument with that party and must be capitalized.

Example 2. Option. W corporation owns all of the outstanding stock of X corporation. Y corporation pays W $1,000,000 in exchange for W's grant of a 3-year call option to Y permitting Y to purchase all of the outstanding stock of X at a certain price per share. Under paragraph (d)(2)(i)(C)(*7*) of this section, Y's payment of $1,000,000 to W constitutes an amount paid to another party to create or originate an option with that party and must be capitalized.

Example 3. Partnership interest. Z corporation pays $10,000 to P, a partnership, in exchange for an ownership interest in P. Under paragraph (d)(2)(i)(A) of this section, Z's payment of $10,000 to P constitutes an amount paid to another party to create an ownership interest in a partnership with that party and must be capitalized.

Example 4. Take or pay contract. Q corporation, a producer of natural gas, pays $1,000,000 to R during 2002 to induce R corporation to enter into a 5-year ''take or pay'' gas purchase contract. Under the contract, R is liable to pay for a specified minimum amount of gas, whether or not R takes such gas. Under paragraph (d)(2)(i)(C)(*6*) of this section, Q's payment is an amount paid to another party to induce that party to enter into an agreement providing Q the right and obligation to provide property or be compensated for such property, regardless of whether the property is provided. Because the agreement does not require that the property be provided prior to the end of the taxable year in which the amount is paid, Q must capitalize the entire $1,000,000 paid to R.

Example 5. Agreement to provide property. P corporation pays R corporation $1,000,000 in exchange for R's agreement to purchase 1,000 units of P's product at any time within the three succeeding calendar years. The agreement describes P's $1,000,000 as a sales discount. Under paragraph (d)(2)(i)(C)(*6*) of this section, P's $1,000,000 payment is an amount paid to induce R to enter into an agreement providing P the right and obligation to provide property. Because the agreement does not require that the property be provided prior to the end of the taxable year in which the amount is paid, P must capitalize the entire $1,000,000 payment.

Example 6. Customer incentive payment. S corporation, a computer manufacturer, seeks to develop a business relationship with V corporation, a computer retailer. As an incentive to encourage V to purchase computers from S, S enters into an agreement with V under which S agrees that, if V purchases $20,000,000 of computers from S within 3 years from the date of the agreement, S will pay V $2,000,000 on the date that V reaches the $20,000,000 threshold. V reaches the $20,000,000 threshold during the third year of the agreement, and S pays V $2,000,000. S is not required to capitalize its payment to V under this paragraph (d)(2) because the payment does not provide S the right to provide property. Moreover, the agreement between S and V requires that the computers be provided prior to the end of the taxable year in which the $2,000,000 is paid. In addition, as provided in paragraph (b)(3)(ii) of this section, S's $2,000,000 payment does not create or enhance a separate and distinct intangible asset for S within the meaning of paragraph (b)(3)(i) of this section.

Example 7. Sales discount. P corporation, a sofa manufacturer that uses the calendar year for federal income tax purposes, seeks to develop a business relationship with R corporation, a furniture retailer. In 2002, P enters into a 5-year agreement with R under which P agrees to reimburse 10 percent of the purchase price paid by R if R purchases more than 1,000 sofas in a single order. In addition, under the agreement, R agrees to purchase 2,000 sofas from P in a single order for delivery during 2002. At the time the agreement is executed, P pays R $20,000, reflecting the 10 percent discount on the first 2,000 sofas to be purchased by R during 2002. The $20,000 payment provides P the right and obligation to provide property (2,000 sofas). Nevertheless, because the agreement requires that the sofas be provided prior to the end of the taxable year in which the amount is paid, P is not required to capitalize its $20,000 payment under this paragraph (d)(2). In addition, as provided in paragraph (b)(3)(ii) of this section, P's $20,000 payment does not create or enhance a separate and distinct intangible asset for P within the meaning of paragraph (b)(3)(i) of this section.

(3) *Prepaid expenses*—(i) *In general.* A taxpayer must capitalize amounts prepaid for benefits to be received in the future.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (d)(3):

Example 1. Prepaid insurance. N corporation, an accrual method taxpayer, pays $10,000 to an insurer to obtain an insurance policy with a 3-year term. The $10,000 is an amount prepaid by N for benefits to be received in the future and must be capitalized under this paragraph (d)(3).

Example 2. Prepaid rent. X corporation, a cash method taxpayer, enters into a 24-month lease of office space. At the time of the lease signing, X prepays $240,000. No other amounts are due under the lease. The $240,000 is an amount prepaid by X for benefits to be received in the future and must be capitalized under this paragraph (d)(3).

(4) *Certain memberships and privileges*—(i) *In general.* A taxpayer must capitalize amounts paid to an organization to obtain or renew a membership or privilege from that organization. A taxpayer is not required to capitalize under this paragraph (d)(4) an amount paid to obtain certification of the taxpayer's products, services, or business processes.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (d)(4):

Example 1. Hospital privilege. B, a physician, pays $10,000 to Y corporation to obtain lifetime staff privileges at a hospital operated by Y. B must capitalize the $10,000 payment under this paragraph (d)(4).

Example 2. Initiation fee. X corporation pays a $50,000 initiation fee to obtain membership in a social club. X must capitalize the $50,000 payment under this paragraph (d)(4).

Example 3. Product rating. V corporation, an automobile manufacturer, pays W corporation, a national quality ratings association, $100,000 to conduct a study and provide a rating of the quality and safety of a line of V's automobiles. V's payment is an amount paid to obtain a certification of V's product and is not required to be capitalized under this paragraph (d)(4).

Example 4. Business process certification. Z corporation, a manufacturer, seeks to obtain a certification that its quality control standards meet a series of international standards known as ISO 9000. Z pays $50,000 to an independent registrar to obtain a certification from the registrar that Z's quality management system conforms to the ISO 9000 standard. Z's payment is an amount paid to obtain a certification of Z's business processes and is not required to be capitalized under this paragraph (d)(4).

(5) *Certain rights obtained from a governmental agency*—(i) *In general.* A taxpayer must capitalize amounts paid to a governmental agency to obtain or renew a trademark, trade name, copyright, license, permit, franchise, or other similar right granted by that governmental agency.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (d)(5):

Example 1. Business license. X corporation pays $15,000 to state Y to obtain a business license that is valid indefinitely. Under this paragraph (d)(5), the amount paid to state Y is an amount paid to a government agency for a right granted by that agency. Accordingly, X must capitalize the $15,000 payment.

Example 2. Bar admission. A, an individual, pays $1,000 to an agency of state Z to obtain a license to practice law in state Z that is valid indefinitely, provided A adheres to the requirements governing the practice of law in state Z. Under this paragraph (d)(5), the amount paid to state Z is an amount paid to a government agency for a right granted by that agency. Accordingly, A must capitalize the $1,000 payment.

(6) *Certain contract rights*—(i) *In general.* Except as otherwise provided in this paragraph (d)(6), a taxpayer must capitalize amounts paid to another party to induce that party to enter into, renew, or renegotiate—

(A) An agreement providing the taxpayer the right to use tangible or intangible property or the right to be compensated for the use of such property;

(B) An agreement providing the taxpayer the right to provide or to

acquire services (or the right to be compensated for such services); or

(C) A covenant not to compete or an agreement having substantially the same effect as a covenant not to compete (except, in the case of an agreement that requires the performance of services, to the extent that the amount represents reasonable compensation for services actually rendered).

(ii) *De minimis amounts.* A taxpayer is not required to capitalize amounts paid to another party (or parties) to induce that party (or those parties) to enter into, renew, or renegotiate an agreement described in paragraph (d)(6)(i) of this section if the aggregate of all amounts paid to that party (or those parties) with respect to the agreement does not exceed $5,000. If the aggregate of all amounts paid to the other party (or parties) with respect to that agreement exceeds $5,000, then all amounts must be capitalized. In general, a taxpayer must determine whether the rules of this paragraph (d)(6)(ii) apply by accounting for the amounts paid with respect to each agreement. However, a taxpayer may elect to establish one or more pools of agreements for purposes of determining the amounts paid with respect to an agreement. Under this pooling method, the amounts paid with respect to each agreement included in the pool is equal to the average amount paid with respect to all agreements included in the pool. A taxpayer computes the average amount paid with respect to all agreements included in the pool by dividing the sum of all amounts paid with respect to all agreements included in the pool by the number of agreements included in the pool. See paragraph (h) of this section for additional rules relating to pooling.

(iii) *Exceptions*—(A) *Current and prior sales.* An amount is not required to be capitalized under paragraph (d)(6)(i)(B) of this section if the amount is allocable to services required to be provided or acquired by the taxpayer prior to the end of the taxable year in which the amount is paid.

(B) *Lessee construction allowances.* Paragraph (d)(6)(i) of this section does not apply to amounts paid by a lessor to a lessee as a construction allowance for tangible property (see, for example, section 110).

(iv) *Examples.* The following examples illustrate the rules of this paragraph (d)(6):

Example 1. New lease agreement. V seeks to lease commercial property in a prominent downtown location of city R. V pays the owner of the commercial property $50,000 as an inducement to enter into a 10-year lease with V. V's payment is an amount paid to another party to induce that party to enter into an agreement providing V the right to use tangible property. Because the $50,000 payment exceeds $5,000, no portion of the amount paid to Z is *de minimis* for purposes of paragraph (d)(6)(ii) of this section. Under paragraph (d)(6)(i)(A) of this section, V must capitalize the entire $50,000 payment.

Example 2. Modification of lease agreement. Partnership Y leases a piece of equipment for use in its business from Z corporation. When the lease has a remaining term of 3 years, Y requests that Z modify the lease by extending the remaining term by 5 years. Y pays $50,000 to Z in exchange for Z's agreement to modify the existing lease. Y's payment of $50,000 is an amount paid to induce Z to renegotiate an agreement providing Y the right to use property. Because the $50,000 payment exceeds $5,000, no portion of the amount paid to Z is de minimis for purposes of paragraph (d)(6)(ii) of this section. Under paragraph (d)(6)(i)(A) of this section, Y must capitalize the entire $50,000 paid to induce Z to renegotiate the lease.

Example 3. Covenant not to compete. R corporation enters into an agreement with A, an individual, that prohibits A from competing with R for a period of three years. To encourage A to enter into the agreement, R agrees to pay A $100,000 upon the signing of the agreement. R's payment is an amount paid to another party to induce that party to enter into a covenant not to compete. Because the $100,000 payment exceeds $5,000, no portion of the amount paid to A is de minimis for purposes of paragraph (d)(6)(ii) of this section. Under paragraph (d)(6)(i)(C) of this section, R must capitalize the entire $100,000 paid to A to induce A to enter into the covenant not to compete.

Example 4. De minimis payments. X corporation is engaged in the business of providing wireless telecommunications services to customers. To induce customer B to enter into a 3-year telecommunications contract, X provides B with a free wireless telephone. X pays $300 to purchase the wireless telephone. X's provision of a wireless telephone to B is an amount paid to B to induce B to enter into an agreement providing X the right to provide services, as described in paragraph (d)(6)(i)(B) of this section. Because the amount of the inducement is $300, the amount of the inducement is de minimis under paragraph (d)(6)(ii) of this section. Accordingly, X is not required to capitalize the amount of the inducement provided to B.

(7) *Certain contract terminations*—(i) *In general.* A taxpayer must capitalize amounts paid to another party to terminate—

(A) A lease of real or tangible personal property between the taxpayer (as lessor) and that party (as lessee);

(B) An agreement that grants that party the exclusive right to acquire or use the taxpayer's property or services or to conduct the taxpayer's business; or

(C) An agreement that prohibits the taxpayer from competing with that party or from acquiring property or services from a competitor of that party.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (d)(7):

Example 1. Termination of exclusive license agreement. On July 1, 2001, N enters into a license agreement with R corporation under which N grants R the exclusive right to manufacture and distribute goods using N's design and trademarks for a period of 10 years. On June 30, 2003, N pays R $5,000,000 in exchange for R's agreement to terminate the exclusive license agreement. N's payment to terminate its license agreement with R constitutes a payment to terminate an exclusive license to use the taxpayer's property, as described in paragraph (d)(7)(i)(B) of this section. Accordingly, N must capitalize its $5,000,000 payment to R.

Example 2. Termination of exclusive distribution agreement. On March 1, 2001, L, a manufacturer, enters into an agreement with M granting M the right to be the sole distributor of L's products in state X for 10 years. On July 1, 2004, L pays M $50,000 in exchange for M's agreement to terminate the distribution agreement. L's payment to terminate its agreement with M constitutes a payment to terminate an exclusive right to acquire L's property, as described in paragraph (d)(7)(i)(B) of this section. Accordingly, L must capitalize its $50,000 payment to M.

Example 3. Termination of covenant not to compete. On February 1, 2001, Y corporation enters into a covenant not to compete with Z corporation that prohibits Y from competing with Z in city V for a period of 5 years. On January 31, 2003, Y pays Z $1,000,000 in exchange for Z's agreement to terminate the covenant not to compete. Y's payment to terminate the covenant not to compete with Z constitutes a payment to terminate an agreement that prohibits Y from competing with Z, as described in paragraph (d)(7)(i)(C) of this section. Accordingly, Y must capitalize its $1,000,000 payment to Z.

Example 4. Termination of exclusive right to acquire property. W corporation owns one-half of the outstanding stock of X corporation. On July 1, 2002, W grants Y corporation a 5-year call option that permits Y to purchase all of W's stock in X. On June 30, 2004, W pays Y $50,000 to terminate the option. W's payment to terminate the option with Y constitutes a payment to terminate an exclusive right to acquire W's property, as described in paragraph (d)(7)(i)(B) of this section. Accordingly, W must capitalize its $50,000 payment to Y.

Example 5. Termination of supply contract. During 2000, Q corporation enters into a 10-year agreement with R corporation under which R agrees to fulfill all of Q's requirements for packaging materials and supplies used by Q in the distribution of Q's goods. During 2005, Q determines that its contract with R has become unprofitable for Q and seeks to terminate the contract. Q pays R $100,000 to terminate the contract. Q's payment to terminate the supply contract with R is a payment to terminate an agreement not described in this paragraph (d)(7). Accordingly, Q is not required to capitalize the $100,000 payment to R under this paragraph (d)(7). In addition, as provided

in paragraph (b)(3)(ii) of this section, Q's $1,000,000 payment does not create or enhance a separate and distinct intangible asset for Q within the meaning of paragraph (b)(3)(i) of this section.

Example 6. Termination of merger agreement. N corporation enters into an agreement with U corporation under which N and U agree to merge. Prior to the merger, N decides that its business will be more successful if it does not merge with U. N pays U $10,000,000 to terminate the agreement. At the time of the payment, N is not under an agreement to merge with any other entity. N's payment to terminate the merger agreement with U is a payment to terminate an agreement not described in this paragraph (d)(7). Accordingly, N is not required to capitalize the $10,000,000 payment under this paragraph (d)(7). In addition, as provided in paragraph (b)(3)(ii) of this section, N's $10,000,000 payment does not create or enhance a separate and distinct intangible asset for N within the meaning of paragraph (b)(3)(i) of this section.

(8) *Certain benefits arising from the provision, production, or improvement of real property*—(i) *In general.* A taxpayer must capitalize amounts paid for real property relinquished to another, or amounts paid to produce or improve real property owned by another, if the real property can reasonably be expected to produce significant economic benefits for the taxpayer.

(ii) *Exclusions.* A taxpayer is not required to capitalize an amount under paragraph (d)(8)(i) of this section to the extent the payment—

(A) Is part of a transaction involving the sale of the real property by the taxpayer;

(B) Is part of the sale of services by the taxpayer to produce or improve the real property;

(C) Is a payment by the taxpayer for some other property or service provided to the taxpayer; or

(D) Is a payment by the taxpayer to another party to create an intangible described in paragraph (d) of this section (other than in this paragraph (d)(8)).

(iii) *Real property.* For purposes of this paragraph (d)(8), real property includes property that is affixed to real property and that will ordinarily remain affixed for an indefinite period of time, such as roads, bridges, tunnels, pavements, wharves and docks, breakwaters and sea walls, elevators, power generation and transmission facilities, and pollution control facilities.

(iv) *Impact fees and dedicated improvements.* Paragraph (d)(8)(i) of this section does not apply to amounts paid to satisfy one-time charges imposed by a state or local government against new development (or expansion of existing development) to finance specific offsite capital improvements for general public use that are necessitated by the new or expanded development. In addition, paragraph (d)(8)(i) of this section does not apply to amounts paid for real property or improvements to real property constructed by the taxpayer where the real property or improvements benefit new development or expansion of existing development, are immediately transferred to a state or local government for dedication to the general public use, and are maintained by the state or local government. See section 263A and the regulations thereunder for capitalization rules that apply to amounts referred to in this paragraph (d)(8)(iv).

(v) *Examples.* The following examples illustrate the rules of this paragraph (d)(8):

Example 1. Amount paid to produce real property owned by another. W corporation operates a quarry on the east side of a river in city Z and a crusher on the west side of the river. City Z's existing bridges are of insufficient capacity to be traveled by trucks in transferring stone from W's quarry to its crusher. As a result, the efficiency of W's operations is greatly reduced. W contributes $1,000,000 to City Z to defray in part the cost of construction of a publicly owned bridge capable of accommodating W's trucks. W's payment to city Z is an amount paid to produce real property (within the meaning of paragraph (d)(8)(iii) of this section) that can reasonably be expected to produce significant economic benefits for W. Under paragraph (d)(8)(i) of this section, W must capitalize the $1,000,000 paid to city Z.

Example 2. Dedicated improvements. X corporation is engaged in the development and sale of residential real estate. In connection with a residential real estate project under construction by X in city Z, X is required by city Z to construct ingress and egress roads to and from its project and immediately transfer the roads to city Z for dedication to general public use. The roads will be maintained by city Z. X pays its subcontractor $100,000 to construct the ingress and egress roads. X's payment is a dedicated improvement within the meaning of paragraph (d)(8)(iv) of this section. Accordingly, X is not required to capitalize the $100,000 payment under this paragraph (d)(8). See section 263A and the regulations thereunder for capitalization rules that apply to amounts referred to in paragraph (d)(8)(iv) of this section.

(9) *Defense or perfection of title to intangible property*—(i) *In general.* A taxpayer must capitalize amounts paid to another party to defend or perfect title to intangible property where that other party challenges the taxpayer's title to the intangible property.

(ii) *Example.* The following example illustrates the rules of this paragraph (d)(9):

Example. Defense of title. R corporation claims to own an exclusive patent on a particular technology. U corporation brings a lawsuit against R, claiming that U is the true owner of the patent, and that R stole the technology from U. The sole issue in the suit involves the validity of R's patent. R chooses to settle the suit by paying U $100,000 in exchange for U's release of all future claim to the patent. R's payment to U is an amount paid to defend or perfect title to intangible property under paragraph (d)(9) of this section and must be capitalized.

(e) *Transaction costs*—(1) *Scope of facilitate*—(i) *In general.* An amount is paid to facilitate a transaction described in paragraph (b)(1)(ii) of this section (an acquisition, creation, or enhancement of an intangible asset) or to facilitate a transaction described in paragraph (b)(1)(iii) of this section (a restructuring or reorganization of a business entity or a transaction involving the acquisition of capital) if the amount is paid in the process of pursuing the transaction. Whether an amount is paid in the process of pursuing a transaction is determined based on all facts and circumstances. The fact that an amount would (or would not) have been paid but-for the transaction is not relevant in determining whether the amount is paid to facilitate the transaction.

(ii) *Treatment of termination payments in integrated transactions.* An amount paid to terminate (or facilitate the termination of) an existing agreement constitutes an amount paid to facilitate a transaction referred to in paragraph (e)(1)(i) of this section if the transaction is expressly conditioned on the termination of the existing agreement.

(iii) *Ordering rules.* An amount required to be capitalized under paragraph (b)(1)(i) of this section does not facilitate a transaction referred to in paragraph (e)(1)(i) of this section. In addition, an amount paid to facilitate a borrowing does not facilitate another transaction (other than the borrowing) referred to in paragraph (e)(1)(i) of this section.

(2) *Transaction.* For purposes of this section, the term *transaction* means all of the factual elements comprising an acquisition, creation, or enhancement of an intangible asset (or a restructuring, reorganization, or transaction involving the acquisition of capital) and includes a series of steps carried out as part of a single plan. Thus, a transaction can involve more than one invoice and more than one intangible asset. For example, a purchase of intangible assets under one purchase agreement may constitute a single transaction, notwithstanding the fact that the acquisition involves multiple intangible assets and the amounts paid to facilitate the

acquisition are capable of being allocated among the various intangible assets acquired.

(3) *Simplifying conventions*—(i) *In general.* For purposes of this paragraph (e), compensation paid to employees (including bonuses and commissions paid to employees), overhead, and de minimis costs (within the meaning of paragraph (e)(3)(ii) of this section) are treated as amounts that do not facilitate a transaction referred to in paragraph (e)(1)(i) of this section. For purposes of this section, whether an individual is an employee is determined in accordance with the rules contained in section 3401(c) and the regulations thereunder.

(ii) *De minimis costs*—(A) *In general.* Except as provided in paragraph (e)(3)(ii)(B) of this section, the term *de minimis costs* means amounts referred to in paragraph (e)(1)(i) of this section that are paid with respect to a transaction if, in the aggregate, the amounts do not exceed $5,000. If the amounts exceed $5,000, no portion of the amounts is a de minimis cost within the meaning of this paragraph (e)(3)(ii)(A). In determining the amount of transaction costs paid with respect to a transaction, a taxpayer generally must account for the actual costs paid with respect to the transaction. However, a taxpayer may elect to determine the amount of transaction costs paid with respect to a transaction using the average cost pooling method described in paragraph (e)(3)(ii)(C) of this section.

(B) *Treatment of commissions.* The term *de minimis costs* does not include commissions paid to facilitate the acquisition of an intangible described in paragraphs (c)(1)(i) through (v) of this section or to facilitate the creation or origination of an intangible described in paragraphs (d)(2)(i)(A) through (E) of this section.

(C) *Average cost pooling method.* A taxpayer may elect to establish one or more pools of similar transactions for purposes of determining the amount of transaction costs paid with respect to a transaction. Under this pooling method, the amount of transaction costs paid with respect to each transaction included in the pool is equal to the average transaction costs paid with respect to all transactions included in the pool. A taxpayer computes the average transaction costs paid with respect to all transactions included in the pool by dividing the sum of all transaction costs paid with respect to all transactions included in the pool by the number of transactions included in the pool. See paragraph (h) of this section for additional rules relating to pooling.

(4) *Special rules applicable to certain trade or business acquisition and reorganization transactions*—(i) *Acquisitive transactions*—(A) *In general.* Except as provided in paragraph (e)(4)(i)(B) of this section, in the case of an acquisition of a trade or business (whether structured as an acquisition of stock or of assets and whether the taxpayer is the acquirer in the acquisition or the target of the acquisition), an amount paid in the process of pursuing the acquisition facilitates the acquisition within the meaning of this paragraph (e) only if the amount relates to activities performed on or after the earlier of—

(*1*) The date on which the acquirer submits to the target a letter of intent, offer letter, or similar written communication proposing a merger, acquisition, or other business combination; or

(*2*) The date on which an acquisition proposal is approved by the taxpayer's Board of Directors (or committee of the Board of Directors) or, in the case of a taxpayer that is not a corporation, the date on which the acquisition proposal is approved by the appropriate governing officials of the taxpayer.

(B) *Inherently facilitative amounts.* An amount paid in the process of pursuing an acquisition facilitates that acquisition if the amount is inherently facilitative, regardless of whether the amount is paid for activities performed prior to the date determined under paragraph (e)(4)(i)(A) of this section. An amount is inherently facilitative if the amount is paid for activities performed in determining the value of the target, negotiating or structuring the transaction, preparing and reviewing transactional documents, preparing and reviewing regulatory filings required by the transaction, obtaining regulatory approval of the transaction, securing advice on the tax consequences of the transaction, securing an opinion as to the fairness of the transaction, obtaining shareholder approval of the transaction, or conveying property between the parties to the transaction.

(C) *Success-based fees.* An amount paid that is contingent on the successful closing of an acquisition is an amount paid to facilitate the acquisition except to the extent that evidence clearly demonstrates that some portion of the amount is allocable to activities that do not facilitate the acquisition.

(D) *Integration costs.* An amount paid to integrate the business operations of the acquirer and the target does not facilitate the acquisition within the meaning of paragraph (e)(1)(i) of this section, regardless of when the integration activities occur.

(ii) *Divisive transactions*—(A) *Stock distributions.* An amount paid to facilitate a distribution of stock to the shareholders of a taxpayer is not required to be capitalized under this section if the divestiture is required by law, regulatory mandate, or court order unless the divestiture itself facilitates another transaction referred to in paragraph (e)(1)(i) of this section. For example, where a taxpayer, to comply with a new law requiring the taxpayer to divest itself of a particular trade or business, contributes that trade or business to a new subsidiary and distributes the stock of the subsidiary to the taxpayer's shareholders, amounts paid to facilitate the distribution do not facilitate a transaction referred to in paragraph (e)(1)(i) of this section and are not required to be capitalized under this section. Conversely, where a taxpayer, to secure regulatory approval for its proposed acquisition of a target corporation, complies with a government mandate to divest itself of a particular trade or business and contributes the trade or business to a new subsidiary and distributes the stock of the subsidiary to the taxpayer's shareholders, amounts paid to facilitate the divestiture are amounts paid to facilitate the acquisition of the target and must be capitalized under this section.

(B) *Taxable asset sales.* An amount paid to facilitate the sale of assets in a transaction not described in section 368 is not required to be capitalized under this section unless the sale is required by law, regulatory mandate, or court order and the sale itself facilitates another transaction referred to in paragraph (e)(1)(i) of this section. For example, where a target corporation, in preparation for a merger with an acquirer, sells assets that are not desired by the acquirer, amounts paid to facilitate the sale are not required to be capitalized as amounts paid to facilitate the merger. Conversely, where a taxpayer, in order to secure regulatory approval for its proposed acquisition of a target corporation, complies with a government mandate to divest itself of a particular trade or business and sells the assets of that trade or business in a taxable sale, amounts paid to facilitate the sale are amounts paid to facilitate the acquisition of the target and must be capitalized under this section.

(iii) *Defense against a hostile acquisition attempt*—(A) *In general.* An amount paid to defend against an acquisition of the taxpayer in a hostile acquisition attempt is not an amount paid to facilitate a transaction within the meaning of paragraph (e)(1)(i) of this section. In determining whether an acquisition attempt is hostile, all relevant facts and circumstances are

taken into account. The mere fact that the taxpayer receives an unsolicited offer from a potential acquirer, or rejects an initial offer from a potential acquirer, is not determinative of whether an acquisition attempt is hostile. On the other hand, the fact that the taxpayer implements defensive measures in response to the acquisition attempt is evidence that the acquisition attempt is hostile. Once an acquisition attempt ceases to be hostile, an amount paid by the taxpayer in the process of pursuing the acquisition of its stock by the acquirer is an amount paid to facilitate a transaction referred to in paragraph (e)(1)(i) of this section.

(B) *Exception for amounts paid to facilitate another capital transaction.* An amount paid to defend against an acquisition of the taxpayer in a hostile acquisition attempt does not include a payment that, while intended to thwart a hostile acquisition attempt by an acquirer, itself facilitates another transaction referred to in paragraph (e)(1)(i) of this section. Thus, for example, an amount paid to effect a recapitalization in an effort to defend against a hostile acquisition attempt is not an amount paid to defend against an acquisition of the taxpayer in a hostile acquisition attempt for purposes of paragraph (e)(4)(iii)(A) of this section.

(5) *Coordination with paragraph (d) of this section.* In the case of an amount paid to facilitate the creation or enhancement of an intangible described in paragraph (d) of this section, the provisions of this paragraph (e) apply regardless of whether a payment described in paragraph (d) is made.

(6) *Application to stock issuance costs of open-end regulated investment companies.* Amounts paid by an open-end regulated investment company (within the meaning of section 851) to facilitate an issuance of its stock are treated as amounts that do not facilitate a transaction referred to in paragraph (e)(1)(i) of this section unless such amounts are paid during the initial stock offering period.

(7) *Examples.* The following examples illustrate the rules of this paragraph (e):

Example 1. Costs to facilitate. In December 2002, R corporation, a calendar year taxpayer, enters into negotiations with X corporation to lease commercial property from X for a period of 25 years. R pays A, its outside legal counsel, $4,000 in December 2002 for services rendered by A during December in assisting with negotiations with X. In January 2003, R and X finalize the terms of the lease and execute the lease agreement. R pays B, another of its outside legal counsel, $2,000 in January 2003 for services rendered by B during January in drafting the lease agreement. The agreement between R and X is an agreement providing R the right to use property, as described in paragraph (d)(6)(i)(A) of this section. R's payments to its outside counsel are amounts paid to facilitate the creation of the agreement. As provided in paragraph (e)(3)(ii)(A) of this section, R must aggregate its transaction costs for purposes of determining whether the transaction costs are *de minimis*. Because R's aggregate transaction costs exceed $5,000, R's transaction costs are not *de minimis* costs within the meaning of paragraph (e)(3)(ii)(A) of this section. Accordingly, R must capitalize the $4,000 paid to A and the $2,000 paid to B under paragraph (b)(1)(ii) of this section.

Example 2. Costs to facilitate. Q corporation pays its outside counsel $20,000 to assist Q in registering its stock with the Securities and Exchange Commission. Q is not a regulated investment company within the meaning of section 851. Q's payments to its outside counsel are amounts paid to facilitate the issuance of stock. Accordingly, Q must capitalize its $20,000 payment under paragraph (b)(1)(iii) of this section.

Example 3. Costs to facilitate. Partnership X leases its manufacturing equipment from Y corporation under a 10-year lease. During 2002, when the lease has a remaining term of 4 years, X enters into a written agreement with Z corporation, a competitor of Y, under which X agrees to lease its manufacturing equipment from Z, subject to the condition that X first successfully terminates its lease with Y. X pays Y $50,000 in exchange for Y's agreement to terminate the equipment lease. Because the new lease is expressly conditioned on the termination of the old lease agreement, as provided in paragraph (e)(1)(ii) of this section, X's payment of $50,000 facilitates the creation of a new lease. Accordingly, X must capitalize the $50,000 termination payment under paragraph (b)(1)(ii) of this section.

Example 4. Costs to facilitate. W corporation enters into a lease agreement with X corporation under which W agrees to lease property to X for a period of 5 years. W pays its outside counsel $7,000 for legal services rendered in drafting the lease agreement and negotiating with X. The agreement between W and X is an agreement providing W the right to be compensated for the use of property, as described in paragraph (d)(6)(i)(A) of this section. Under paragraph (e)(1)(i) of this section, W's payment to its outside counsel is an amount paid to facilitate W's creation of an intangible asset. As provided by paragraph (e)(5) of this section, W must capitalize its $7,000 payment to outside counsel notwithstanding the fact that W made no payment described in paragraph (d)(6)(i) of this section to induce X to enter into the agreement.

Example 5. Costs to facilitate. Q corporation seeks to acquire all of the outstanding stock of Y corporation. To finance the acquisition, Q must issue new debt. Q pays an investment banker $25,000 to market the debt to the public and pays its outside counsel $10,000 to prepare the offering documents for the debt. Q's payment of $35,000 facilitates a borrowing and must be capitalized under paragraph (b)(1)(iii) of this section. As provided in paragraph (e)(1)(iii) of this section, Q's payment does not facilitate the acquisition of Y, notwithstanding the fact that Q incurred the new debt to finance its acquisition of Y.

Example 6. Costs that do not facilitate. X corporation brings a legal action against Y corporation to recover lost profits resulting from Y's alleged infringement of X's copyright. Y does not challenge X's copyright, but argues that it did not infringe upon X's copyright. X pays its outside counsel $25,000 for legal services rendered in pursuing the suit against Y. Because X's title to its copyright is not in question, X's action against Y does not involve X's defense or perfection of title to intangible property. Thus, the amount paid to outside counsel does not facilitate the creation or enhancement of an intangible asset described in paragraph (d)(9) of this section. In addition, the amount paid to outside counsel does not facilitate the acquisition, creation, or enhancement of any other intangible asset described in this section. Accordingly, X is not required to capitalize its $25,000 payment under this section.

Example 7. De minimis rule. W corporation, a commercial bank, acquires a portfolio containing 100 loans from Y corporation. W pays an independent agent a commission of $10,000 for brokering the acquisition. The commission is an amount paid to facilitate W's acquisition of an intangible asset. The acquisition of the loan portfolio is a single transaction within the meaning of paragraph (e)(2) of this section. Because the amounts paid to facilitate the transaction exceed $5,000, the amounts are not *de minimis* as defined in paragraph (e)(3)(ii)(A) of this section. Accordingly, W must capitalize the $10,000 commission under paragraph (b)(1)(ii) of this section.

Example 8. Compensation and overhead. P corporation, a commercial bank, maintains a loan acquisition department whose sole function is to acquire loans from other financial institutions. As provided in paragraph (e)(3)(i) of this section, P is not required to capitalize any portion of the compensation paid to the employees in its loan acquisition department or any portion of its overhead allocable to the loan acquisition department.

Example 9. Corporate acquisition. (i) On February 1, 2002, R corporation decides to investigate the acquisition of three potential targets: T corporation, U corporation, and V corporation. R's consideration of T, U, and V represents the consideration of three distinct transactions, any or all of which R might consummate. On March 1, 2002, R issues a letter of intent to T and stops pursuing U and V. On July 1, 2002, R acquires the stock of T in a transaction described in section 368. R pays $1,000,000 to an investment banker and $50,000 to its outside counsel to conduct due diligence on the targets, determine the value of T, U, and V, negotiate and structure the transaction with T, draft the merger agreement, secure shareholder approval, prepare SEC filings, and obtain the necessary regulatory approvals.

(ii) Under paragraph (e)(4)(i)(A) of this section, the amounts paid to conduct due diligence on T, U and V prior to March 1, 2002 (the date of the letter of intent) are not amounts paid to facilitate the acquisition of the stock of T and are not required to be

capitalized under this paragraph (e). However, the amounts paid to conduct due diligence on T on and after March 1, 2002, are amounts paid to facilitate the acquisition of the stock of T and must be capitalized under paragraph (b)(1)(ii) of this section.

(iii) Under paragraph (e)(4)(i)(B) of this section, the amounts paid to determine the value of T, negotiate and structure the transaction with T, draft the merger agreement, secure shareholder approval, prepare SEC filings, and obtain necessary regulatory approvals are inherently facilitative amounts paid to facilitate the acquisition of the stock of T and must be capitalized, regardless of whether those activities occur prior to March 1, 2002.

(iv) Under paragraph (e)(4)(i)(B) of this section, the amounts paid to determine the value of U and V are inherently facilitative amounts paid to facilitate the acquisition of U or V and must be capitalized. However, these fees may be recovered under section 165 in the taxable year that R abandons the planned mergers with U and V.

Example 10. Corporate acquisition; employee bonus. Assume the same facts as in *Example 9,* except R pays a bonus of $10,000 to one of its corporate officers who negotiated the acquisition of T. As provided by paragraph (e)(3)(i) of this section, Y is not required to capitalize any portion of the bonus paid to the corporate officer.

Example 11. Corporate acquisition; integration costs. Assume the same facts as in *Example 9,* except that, before and after the acquisition is consummated, R incurs costs to relocate personnel and equipment, provide severance benefits to terminated employees, integrate records and information systems, prepare new financial statements for the combined entity, and reduce redundancies in the combined business operations. Under paragraph (e)(4)(i)(D) of this section, these costs do not facilitate the acquisition of T. Accordingly, R is not required to capitalize any of these costs under this section.

Example 12. Corporate acquisition; compensation to target's employees. Assume the same facts as in *Example 9,* except that, prior to the acquisition, certain employees of T held unexercised options issued pursuant to T's incentive stock option plan. These options granted the employees the right to purchase T stock at a fixed option price. The options did not have a readily ascertainable value (within the meaning of § 1.83–7(b)), and thus no amount was included in the employees' income when the options were granted. As a condition of the acquisition, T is required to terminate its incentive stock option plan. T therefore agrees to pay its employees who hold unexercised stock options the difference between the option price and the current value of T's stock in consideration of their agreement to cancel their unexercised options. Under paragraph (e)(3)(i) of this section, T is not required to capitalize the amounts paid to its employees.

Example 13. Corporate acquisition; retainer. Y corporation's outside counsel charges Y $60,000 for services rendered in facilitating the friendly acquisition of the stock of Y corporation by X corporation. Y has an agreement with its outside counsel under which Y pays an annual retainer of $50,000. Y's outside counsel has the right to offset amounts billed for any legal services rendered against the annual retainer. Pursuant to this agreement, Y's outside counsel offsets $50,000 of the legal fees from the acquisition against the retainer and bills Y for the balance of $10,000. The $60,000 legal fee is an amount paid to facilitate the reorganization of Y as described in paragraph (e)(1)(i) of this section. Y must capitalize the full amount of the $60,000 legal fee.

Example 14. Corporate acquisition; antitrust defense costs. On March 1, 2002, V corporation enters into an agreement with X corporation to acquire all of the outstanding stock of X. On April 1, 2002, federal and state regulators file suit against V to prevent the acquisition of X on the ground that the acquisition violates antitrust laws. V enters into a consent agreement with regulators on May 1, 2002, that allows the acquisition to proceed, but requires V to hold separate the business operations of X pending the outcome of the antitrust suit and subjects V to possible divestiture. V acquires title to all of the outstanding stock of X on June 1, 2002. After June 1, 2002, the regulators pursue antitrust litigation against V seeking rescission of the acquisition. V pays $50,000 to its outside counsel for services rendered after June 1, 2002, to defend against the antitrust litigation. V ultimately prevails in the antitrust litigation. V's costs to defend the antitrust litigation are costs to facilitate its acquisition of the stock of X under paragraph (e)(1)(i) of this section and must be capitalized. Although title to the shares of X passed to V prior to the date V incurred costs to defend the antitrust litigation, the amounts paid by V are paid in the process of pursuing the acquisition of the stock of X because the acquisition was not complete until the antitrust litigation was ultimately resolved. Because the amounts paid to defend the suit are not *de minimis* costs within the meaning of paragraph (e)(3)(ii)(A) of this section, V must capitalize the full $50,000.

Example 15. Corporate acquisition; hostile defense costs. (i) Y corporation, a publicly traded corporation, becomes the target of a hostile takeover attempt by Z corporation on January 15, 2002. In an effort to defend against the takeover, Y pays legal fees to seek an injunction against the takeover and investment banking fees to locate a potential ''white knight'' acquirer, as well as costs to effect a recapitalization. Y's efforts to enjoin the takeover and locate a white knight acquirer are unsuccessful, and on March 15, 2002, Y's Board of Directors decides to abandon its defense against the takeover and negotiate with Z in an effort to obtain the highest possible price for its shareholders. After Y abandons its defense against the takeover, Y pays its investment bankers $1,000,000 for a fairness opinion and for services rendered in negotiating with Z.

(ii) Under paragraph (e)(4)(iii)(A) of this section, the legal fees paid by Y to seek an injunction against the takeover and the investment banking fees paid to search for a white knight acquirer do not facilitate the acquisition of Y by Z. Such amounts are paid to defend against Z's hostile takeover attempt and are not required to be capitalized under this section.

(iii) Under paragraph (e)(4)(iii)(B) of this section, the amounts paid by Y to effect a recapitalization are not amounts paid to defend against a hostile acquisition attempt. Accordingly, the amounts paid to effect the recapitalization must be capitalized under paragraph (b)(1)(iii) of this section.

(iv) The $1,000,000 paid to the investment bankers after Y abandons its defense against the takeover is an amount paid to facilitate an acquisition of Y and must be capitalized under paragraph (b)(1)(iii) of this section.

Example 16. Corporate acquisition; break up fees. (i) N corporation enters into an agreement with U corporation under which U agrees to purchase all of the outstanding stock of N for $70 per share. The agreement between N and U provides that if the acquisition does not succeed, N will pay U $1,000,000 as a break up fee. Prior to the closing of the acquisition, N enters into an agreement with W under which W agrees to purchase all of the outstanding stock of N for $80 per share on the condition that N terminates its pending acquisition agreement with U. N pays U $1,000,000 to terminate the acquisition agreement and N subsequently is acquired by W. Under paragraph (e)(1)(ii) of this section, the $1,000,000 paid to U is an amount paid to facilitate a transaction described in paragraph (b)(1)(iii) of this section. Accordingly, N must capitalize the $1,000,000 payment.

Example 17. Corporate acquisition; break up fees to white knight. Z corporation launches an unsolicited hostile tender offer of $70 per share for 55 percent of the outstanding shares of T corporation. In an effort to defend against a takeover by Z, T enters into an agreement with W corporation, a ''white knight'' acquirer, under which W agrees to pay $75 per share for all outstanding shares of T if T agrees to recommend the transaction to its shareholders. The agreement between T and W provides that if the acquisition of T by W does not succeed, T will pay W $1,000,000 as a break up fee. Prior to the acquisition of T by W, Z amends its offer to $85 per share for all of the outstanding shares of T. T's Board of Directors concludes that Z's amended offer is preferable and recommends that its shareholders accept Z's amended offer. Z subsequently acquires all of the outstanding shares of T for $85 per share. In accordance with its agreement with W, T pays W $1,000,000 to terminate the acquisition agreement. The $1,000,000 paid to W does not facilitate Z's acquisition of the outstanding shares of T. Under paragraph (e)(1)(ii) of this section, T's payment to W is not made pursuant to an agreement under which the acquisition of the outstanding shares of T by Z is expressly conditioned on the termination of the agreement between T and W.

(f) *12-month rule*—(1) *In general*—(i) *Amounts paid to create or enhance an intangible asset.* A taxpayer is not required to capitalize amounts paid to create or enhance an intangible asset if the amounts do not create or enhance any right or benefit for the taxpayer that extends beyond the earlier of—

(A) 12 months after the first date on which the taxpayer realizes the right or benefit; or

(B) The end of the taxable year following the taxable year in which the payment is made.

(ii) *Transaction costs.* A taxpayer is not required to capitalize amounts paid to facilitate the creation or enhancement of an intangible asset if, by reason of paragraph (f)(1)(i) of this section, capitalization would not be required for amounts paid to create or enhance that intangible asset.

(2) *Duration of benefit for contract terminations.* For purposes of this paragraph (f), amounts paid to terminate a contract or other agreement described in paragraph (d)(7)(i) of this section prior to its expiration date (or amounts paid to facilitate such termination) create a benefit for the taxpayer equal to the unexpired term of the agreement as of the date of the termination.

(3) *Inapplicability to created financial interests and self-created amortizable section 197 intangibles.* Paragraph (f)(1) of this section does not apply to amounts paid to create or enhance an intangible described in paragraph (d)(2) of this section (relating to amounts paid to create or enhance financial interests) or to amounts paid to create or enhance an intangible asset that constitutes an amortizable section 197 intangible within the meaning of section 197(c).

(4) *Inapplicability to rights of indefinite duration.* Paragraph (f)(1) of this section does not apply to amounts paid to create or enhance a right of indefinite duration. A right has an indefinite duration if it has no period of duration fixed by agreement or by law, or if it is not based on a period of time, such as a right attributable to an agreement to provide or receive a fixed amount of goods or services. For example, a license granted by a governmental agency that permits the taxpayer to operate a business conveys a right of indefinite duration if the license may be revoked only upon the taxpayer's violation of the terms of the license.

(5) *Rights subject to renewal*—(i) *In general.* For purposes of paragraph (f)(1)(i) of this section, the duration of a right includes any renewal period if, based on all of the facts and circumstances in existence during the taxable year in which the right is created, the facts indicate a reasonable expectancy of renewal.

(ii) *Reasonable expectancy of renewal.* The following factors are significant in determining whether there exists a reasonable expectancy of renewal:

(A) *Renewal history.* The fact that similar rights are historically renewed is evidence of a reasonable expectancy of renewal. On the other hand, the fact that similar rights are rarely renewed is evidence of a lack of a reasonable expectancy of renewal. Where the taxpayer has no experience with similar rights, or where the taxpayer holds similar rights only occasionally, this factor is less indicative of a reasonable expectancy of renewal.

(B) *Economics of the transaction.* The fact that renewal is necessary in order for the taxpayer to earn back its investment in the right is evidence of a reasonable expectancy of renewal. For example, if a taxpayer pays $10,000 to enter into a renewable contract with an initial 9-month term that is expected to generate income to the taxpayer of $1,000 per month, the fact that renewal is necessary in order for the taxpayer to earn back its $10,000 inducement is evidence of a reasonable expectancy of renewal.

(C) *Likelihood of renewal by other party.* Evidence that indicates a likelihood of renewal by the other party to a right, such as a bargain renewal option or similar arrangement, is evidence of a reasonable expectancy of renewal. However, the mere fact that the other party will have the opportunity to renew on the same terms as are available to others, in a competitive auction or similar process that is designed to reflect fair market value, is not evidence of a reasonable expectancy of renewal.

(D) *Terms of renewal.* The fact that material terms of the right are subject to renegotiation at the end of the initial term is evidence of a lack of a reasonable expectancy of renewal. For example, if the parties to an agreement must renegotiate price or amount, the renegotiation requirement is evidence of a lack of a reasonable expectancy of renewal.

(iii) *Safe harbor pooling method.* In lieu of applying the reasonable expectancy of renewal test described in paragraph (f)(5)(ii) of this section to each separate right created or enhanced during a taxable year, a taxpayer may establish one or more pools of similar rights for which the initial term does not extend beyond the period described in paragraph (f)(1)(i) of this section and may apply the reasonable expectancy of renewal test to each pool. See paragraph (h) of this section for additional rules relating to pooling. The application of paragraph (f)(1) of this section to each pool is determined in the following manner:

(A) All amounts (except *de minimis* amounts described in paragraph (d)(6)(ii) of this section) paid to create or enhance the rights included in the pool and all amounts paid to facilitate the creation or enhancement of the rights included in the pool are aggregated.

(B) If less than 20 percent of the rights in the pool are reasonably expected to be renewed beyond the period prescribed in paragraph (f)(1)(i) of this section, all rights in the pool are treated as having a duration that does not extend beyond the period prescribed in paragraph (f)(1)(i) of this section, and the taxpayer is not required to capitalize under this section any portion of the aggregate amount described in paragraph (f)(5)(iii)(A) of this section.

(C) If more than 80 percent of the rights in the pool are reasonably expected to be renewed beyond the period prescribed in paragraph (f)(1)(i) of this section, all rights in the pool are treated as having a duration that extends beyond the period prescribed in paragraph (f)(1)(i) of this section, and the taxpayer is required to capitalize under this section the aggregate amount described in paragraph (f)(5)(iii)(A) of this section.

(D) If 20 percent or more, but 80 percent or less, of the rights in the pool are reasonably expected to be renewed beyond the period prescribed in paragraph (f)(1)(i) of this section, the aggregate amount described in paragraph (f)(5)(iii)(A) of this section is multiplied by the percentage of the rights in the pool that are reasonably expected to be renewed beyond the period prescribed in paragraph (f)(1)(i) of this section and the taxpayer must capitalize the resulting amount under this section by treating such amount as creating a separate intangible asset.

(6) *Rights terminable at will.* A right is not described in paragraph (f)(1)(i) of this section merely because the right is terminable at will by either party. However, for purposes of paragraph (f)(5) of this section, the fact that similar rights are typically terminated prior to renewal is relevant in determining whether there exists a reasonable expectancy of renewal for the right.

(7) *Coordination with section 461.* In the case of a taxpayer using an accrual method of accounting, the rules of this paragraph (f) do not affect the determination of whether a liability is incurred during the taxable year, including the determination of whether economic performance has occurred with respect to the liability. See § 1.461–4(d) for rules relating to economic performance.

(8) *Examples.* The rules of this paragraph (f) are illustrated by the following examples, in which it is assumed (unless otherwise stated) that

the taxpayer is a calendar year, accrual method taxpayer:

Example 1. Prepaid expenses. On December 1, 2002, N corporation pays a $10,000 insurance premium to obtain a property insurance policy with a 1-year term that begins on February 1, 2003. The amount paid by N is a prepaid expense described in paragraph (d)(3) of this section. Because the right or benefit attributable to the $10,000 payment extends beyond the end of the taxable year following the taxable year in which the payment is made, the 12-month rule provided by this paragraph (f) does not apply. N must capitalize the $10,000 payment.

Example 2. Prepaid expenses. Assume the same facts as in Example 1, except that the policy has a term beginning on December 15, 2002. The 12-month rule of this paragraph (f) applies to the $10,000 payment because the right or benefit attributable to the payment neither extends more than 12 months beyond December 15, 2002 (the first date the benefit is realized by the taxpayer) nor beyond the taxable year following the year in which the payment is made. Accordingly, N is not required to capitalize the $10,000 payment.

Example 3. Financial interests. On October 1, 2002, X corporation makes a 9-month loan to B in the principal amount of $250,000. The principal amount of the loan paid to B constitutes an amount paid to create or originate a financial interest under paragraph (d)(2)(i)(B) of this section. The 9-month term of the loan does not extend beyond the period prescribed by paragraph (f)(1)(i) of this section. However, as provided by paragraph (f)(3) of this section, the rules of this paragraph (f) do not apply to intangibles described in paragraph (d)(2) of this section. Accordingly, X must capitalize the $250,000 loan amount.

Example 4. Financial interests. X corporation owns all of the outstanding stock of Z corporation. On December 1, Y corporation, a calendar year taxpayer, pays X $1,000,000 in exchange for X's grant of a 9-month call option to Y permitting Y to purchase all of the outstanding stock of Z. Y's payment to X constitutes an amount paid to create or originate an option with X under paragraph (d)(2)(i)(C)(7) of this section. The 9-month term of the option does not extend beyond the period prescribed by paragraph (f)(1)(i) of this section. However, as provided by paragraph (f)(3) of this section, the rules of this paragraph (f) do not apply to intangibles described in paragraph (d)(2) of this section. Accordingly, Y must capitalize the $1,000,000 payment.

Example 5. License. (i) On July 1, 2002, R corporation pays $10,000 to state X to obtain a license to operate a business in state X for a period of 5 years. The terms of the license require R to pay state X an annual fee of $500 due on July 1 of each of the succeeding four years. R pays the $500 fee on July 1 of each succeeding year as required by the license.

(ii) R's payment of $10,000 is an amount paid to a governmental agency for a license granted by that agency to which paragraph (d)(5) of this section applies. Because R's payment creates rights or benefits for R that extend beyond the end of 2003 (the taxable year following the taxable year in which the payment is made), the rules of this paragraph (f) do not apply to R's payment. Accordingly, R must capitalize the $10,000 payment.

(iii) R's payment of each $500 annual fee is a prepaid expense described in paragraph (d)(3) of this section. R is not required to capitalize the $500 fee in each of the succeeding four taxable years. The rules of this paragraph (f) apply to each such payment because each payment provides a right or benefit to R that does not extend beyond 12 months after the first date on which R realizes the rights or benefits attributable to the payment and does not extend beyond the end of the taxable year following the taxable year in which the payment is made.

Example 6. Lease. On December 1, 2002, W corporation, a calendar year taxpayer, enters into a lease agreement with X corporation under which W agrees to lease property to X for a period of 9 months, beginning on December 1, 2002. W pays its outside counsel $7,000 for legal services rendered in drafting the lease agreement and negotiating with X. The agreement between W and X is an agreement providing W the right to be compensated for the use of property, as described in paragraph (d)(6)(i)(A) of this section. W's $7,000 payment to its outside counsel is an amount paid to facilitate W's creation of an intangible asset as described in paragraph (e)(1)(i) of this section. Under paragraph (f)(1)(ii) of this section, W's payment to its outside counsel is not required to be capitalized because, by reason of paragraph (f)(1)(i) of this section (relating to the 12-month rule) an amount described in paragraph (d)(6)(i)(A) of this section to create the agreement between W and X would not be required to be capitalized under this section.

Example 7. Certain contract terminations. V corporation owns real property that it has leased to A for a period of 15 years. When the lease has a remaining unexpired term of 5 years, V requests that A agree to terminate the lease, enabling V to use the property in its trade or business. V pays A $100,000 in exchange for A's agreement to terminate the lease. V's payment to A to terminate the lease is described in paragraph (d)(7)(i)(A) of this section. Under paragraph (f)(2) of this section, V's payment creates a benefit for V with a duration of 5 years, the remaining unexpired term of the lease as of the date of the termination. Because the benefit attributable to the expenditure extends beyond 12 months after the first date on which V realizes the rights or benefits attributable to the payment and beyond the end of the taxable year following the taxable year in which the payment is made, the rules of this paragraph (f) do not apply to the payment. V must capitalize the $100,000 payment.

Example 8. Certain contract terminations. Assume the same facts as in *Example 7,* except the lease is terminated when it has a remaining unexpired term of 10 months. Under paragraph (f)(2) of this section, V's payment creates a benefit for V with a duration of 10 months. The 12-month rule of this paragraph (f) applies to the payment because the benefit attributable to the payment neither extends more than 12 months beyond the date of termination (the first date the benefit is realized by V) nor beyond the taxable year following the year in which the payment is made. Accordingly, V is not required to capitalize the $100,000 payment.

Example 9. Certain contract terminations. M corporation enters into a 5-year agreement with X corporation under which X is required to provide M with services over the term of the agreement. Under the terms of the agreement, either M or X may terminate the agreement without cause upon 30 days notice. M pays C, an individual, a $10,000 commission for services provided by C in locating X and bringing the parties together. The agreement between M and X is an agreement providing M the right to acquire services as described in paragraph (d)(6)(i)(B) of this section. M's $10,000 payment to C is an amount paid to facilitate the creation of an intangible asset as described in paragraph (e)(1)(i) of this section. Because the duration of the contract is 5 years, the 12-month rule contained in paragraph (f)(1)(i) of this section does not apply, notwithstanding the fact that the agreement is terminable by either party without cause upon 30 days notice. M must capitalize the $10,000 commission payment.

Example 10. Coordination with section 461. (i) U corporation leases office space from W corporation at a monthly rental rate of $2,000. On December 31, 2002, U prepays its office rent expense for the first six months of 2003 in the amount of $12,000. For purposes of this example, it is assumed that the recurring item exception provided by § 1.461–5 does not apply and that the lease between W and U is not a section 467 rental agreement as defined in section 467(d).

(ii) Under § 1.461–4(d)(3), U's prepayment of rent is a payment for the use of property by U for which economic performance occurs ratably over the period of time U is entitled to use the property. Accordingly, because economic performance with respect to U's prepayment of rent does not occur until 2003, U's prepaid rent is not incurred in 2002 and therefore is not properly taken into account through capitalization, deduction, or otherwise in 2002. Thus, the rules of this paragraph (f) do not apply to U's prepayment of its rent.

(iii) Alternatively, assume that U uses the cash method of accounting and the economic performance rules in § 1.461–4 therefore do not apply to U. The 12-month rule of this paragraph (f) applies to the $12,000 payment because the rights or benefits attributable to U's prepayment of its rent do not extend beyond December 31, 2003. Accordingly, U is not required to capitalize its prepaid rent.

Example 11. Coordination with section 461. N corporation pays R corporation, an advertising and marketing firm, $40,000 on August 1, 2002, for advertising and marketing services to be provided to N throughout calendar year 2003. For purposes of this example, it is assumed that the recurring item exception provided by § 1.461–5 does not apply. Under § 1.461–4(d)(2), N's payment arises out of the provision of services to N by R for which economic performance occurs as the services are provided. Accordingly, because economic performance with respect to N's prepaid

advertising expense does not occur until 2003, N's prepaid advertising expense is not incurred in 2002 and therefore is not properly taken into account through capitalization, deduction, or otherwise in 2002. Thus, the rules of this paragraph (f) do not apply to N's payment.

(g) *Treatment of capitalized transaction costs*—(1) *Costs described in paragraph (b)(1)(i) or (ii) of this section.* Except in the case of amounts paid by an acquirer to facilitate an acquisition of stock or assets in a transaction described in section 368, an amount required to be capitalized by paragraph (b)(1)(i) or (ii) of this section is capitalized to the basis of the intangible asset acquired, created, or enhanced.

(2) *Costs described in paragraph (b)(1)(iii) of this section*—(i) *Stock issuance or recapitalization.* An amount paid to facilitate a stock issuance or a recapitalization is not capitalized to the basis of an intangible asset but is treated as a reduction of the proceeds from the stock issuance or the recapitalization.

(ii) [Reserved].

(h) *Special rules applicable to pooling*—(1) *In general.* The rules of this paragraph (h) apply to the pooling methods described in paragraph (d)(6)(ii) of this section (relating to de minimis rules applicable to certain contract rights), paragraph (e)(3)(ii)(C) of this section (relating to *de minimis* rules applicable to transaction costs), and paragraph (f)(5)(iii) of this section (relating to the application of the 12-month rule to renewable rights).

(2) *Election to use pooling.* An election to use a pooling method identified in paragraph (h)(1) of this section for any taxable year is made by establishing one or more pools for the taxable year in accordance with the rules governing the particular pooling method and the rules prescribed by this paragraph (h). An election to use a pooling method identified in paragraph (h)(1) of this section is irrevocable with respect to each pool established during the taxable year.

(3) *Definition of pool.* A taxpayer may use any reasonable method of defining a pool of similar transactions, agreements, or rights, including a method based on the type of customer or the type of product provided under a contract. However, a taxpayer that elects to pool similar transactions, agreements, or rights must include in the pool all similar transactions, agreements, or rights arising during the taxable year.

(4) *Consistency requirement.* A taxpayer that uses the pooling method described in paragraph (f)(5)(iii) of this section for purposes of applying the 12-month rule to a right or benefit—

(i) Must use the pooling methods described in paragraph (d)(6)(ii) of this section (relating to de minimis rules applicable to inducements) and paragraph (e)(3)(ii)(C) of this section (relating to *de minimis* applicable to transaction costs) for purposes of determining the amount paid to create, or facilitate the creation of, the right or benefit; and

(ii) Must use the same pool for purposes of paragraph (d)(6)(ii) of this section and paragraph (e)(3)(ii)(C) of this section as is used for purposes of paragraph (f)(5)(iii) of this section.

(i) [Reserved].

(j) *Application to accrual method taxpayers.* For purposes of this section, the terms *amount paid* and *payment* mean, in the case of a taxpayer using an accrual method of accounting, a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(k) *Treatment of related parties and indirect payments.* For purposes of this section, references to a party other than the taxpayer include persons related to that party and persons acting for or on behalf of that party. Persons are related for purposes of this section only if their relationship is described in section 267(b) or 707(b) or they are engaged in trades or businesses under common control within the meaning of section 41(f)(1).

(l) *Examples.* The following examples illustrate the rules of this section:

Example 1. License granted by a governmental unit. (i) X corporation pays $25,000 to state R to obtain a license to sell alcoholic beverages in its restaurant. The license is valid indefinitely, provided X complies will all applicable laws regarding the sale of alcoholic beverages in state R. X pays its outside counsel $4,000 for legal services rendered in preparing the license application and otherwise representing X during the licensing process. In addition, X determines that $2,000 of salaries paid to its employees is allocable to services rendered by the employees in obtaining the license.

(ii) X's payment of $25,000 is an amount paid to a governmental unit to obtain a license granted by that agency, as described in paragraph (d)(5)(i) of this section. The right has an indefinite duration and constitutes an amortizable section 197 intangible. Accordingly, the provisions of paragraph (f) of this section (relating to the 12-month rule) do not apply to X's payment. X must capitalize its $25,000 payment to obtain the license from state R.

(iii) As provided in paragraph (e)(3) of this section, X is not required to capitalize employee compensation because such amounts are treated as amounts that do not facilitate the acquisition, creation, or enhancement of an intangible asset. Thus, X is not required to capitalize the $2,000 of employee compensation allocable to the transaction.

(iv) X's payment of $4,000 to its outside counsel is an amount paid to facilitate the creation of an intangible asset, as described in paragraph (e)(1)(i) of this section. Because X's transaction costs do not exceed $5,000, X's transaction costs are *de minimis* within the meaning of paragraph (e)(3)(ii)(A) of this section. Accordingly, X is not required to capitalize the $4,000 payment to its outside counsel under this section.

Example 2. Franchise agreement. (i) R corporation is a franchisor of income tax return preparation outlets. V corporation negotiates with R to obtain the right to operate an income tax return preparation outlet under a franchise from R. V pays an initial $100,000 franchise fee to R in exchange for the franchise agreement. In addition, V pays its outside counsel $4,000 to represent V during the negotiations with R. V also pays $2,000 to an industry consultant to advise V during the negotiations with R.

(ii) Under paragraph (d)(6)(i)(A) of this section, V's payment of $100,000 is an amount paid to another party to induce that party to enter into an agreement providing V the right to use tangible or intangible property. Accordingly, V must capitalize its $100,000 payment to R. The franchise agreement is an amortizable section 197 intangible within the meaning of section 197(c). Accordingly, as provided in paragraph (f)(3) of this section, the 12-month rule contained in paragraph (f)(1)(i) of this section does not apply.

(iii) V's payment of $4,000 to its outside counsel and $2,000 to the industry consultant are amounts paid to facilitate the creation of an intangible asset, as described in paragraph (e)(1)(i) of this section. Because V's aggregate transaction costs exceed $5,000, V's transaction costs are not *de minimis* within the meaning of paragraph (e)(3)(ii)(A) of this section. Accordingly, V must capitalize the $4,000 payment to its outside counsel and the $2,000 payment to the industry consultant under this section into the basis of the franchise, as provided in paragraph (g)(1) of this section.

Example 3. Covenant not to compete. (i) On December 1, 2002, N corporation, a calendar year taxpayer, enters into a covenant not to compete with B, a key employee that is leaving the employ of N. The covenant not to compete prohibits B from competing with N for a period of 9 months, beginning December 1, 2002. N pays B $50,000 in full consideration for B's agreement not to compete. In addition, N pays its outside counsel $6,000 to facilitate the creation of the covenant not to compete with B.

(ii) Under paragraph (d)(6)(i)(C) of this section, N's payment of $50,000 is an amount paid to another party to induce that party to enter into a covenant not to compete with N. However, because the covenant not to compete has a duration that does not extend beyond 12 months after the first date on which N realizes the rights attributable to its payment (*i.e.*, December 1, 2002), the 12-month rule contained in paragraph (f)(1)(i) of

this section applies. Accordingly, N is not required to capitalize its $50,000 payment to B. In addition, as provided in paragraph (f)(1)(ii) of this section, N is not required to capitalize its $6,000 payment to facilitate the creation of the covenant not to compete.

Example 4. Corporate reorganization; initial public offering. Y corporation is a privately-owned company. Y's Board of Directors authorizes an initial public offering of Y's stock in order to fund future growth. Y pays $5,000,000 in professional fees for investment banking services related to the determination of the offering price and legal services related to the development of the offering prospectus and the registration and issuance of stock. Under paragraph (b)(1)(iii) of this section, the $5,000,000 is an amount paid to facilitate a transaction involving the acquisition of capital. As provided in paragraph (g)(2)(i) of this section, Y must treat the $5,000,000 as a reduction of the proceeds from the stock issuance.

Example 5. Demand-side management. (i) X corporation, a public utility engaged in generating and distributing electrical energy, provides programs to its customers to promote energy conservation and energy efficiency. These programs are aimed at reducing electrical costs to X's customers, building goodwill with X's customers, and reducing X's future operating and capital costs. X provides these programs without obligating any of its customers participating in the programs to purchase power from X in the future. Under these programs, X pays a consultant to help industrial customers design energy-efficient manufacturing processes, to conduct ''energy efficiency audits'' that serve to identify for customers inefficiencies in their energy usage patterns, and to provide cash allowances to encourage residential customers to replace existing appliances with more energy efficient appliances.

(ii) The amounts paid by X to the consultant are not amounts to acquire, create, or enhance an intangible identified in paragraph (c) or (d) of this section or to facilitate such an acquisition, creation, or enhancement. In addition, the amounts do not create a separate and distinct intangible asset within the meaning of paragraph (b)(3) of this section. Accordingly, the amounts paid to the consultant are not required to be capitalized under this section. While the amounts may serve to reduce future operating and capital costs and create goodwill with customers, these benefits, without more, are not intangible assets for which capitalization is required under this section unless the Internal Revenue Service publishes guidance identifying these benefits as an intangible asset for which capitalization is required.

Example 6. Business process re-engineering. (i) V corporation manufactures its products using a batch production system. Under this system, V continuously produces component parts of its various products and stockpiles these parts until they are needed in V's final assembly line. Finished goods are stockpiled awaiting orders from customers. V discovers that this process ties up significant amounts of V's capital in work-in-process and finished goods inventories, and hires B, a consultant, to advise V on improving the efficiency of its manufacturing operations. B recommends a complete re-engineering of V's manufacturing process to a process known as just-in-time manufacturing. Just-in-time manufacturing involves reconfiguring a manufacturing plant to a configuration of ''cells'' where each team in a cell performs the entire manufacturing process for a particular customer order, thus reducing inventory stockpiles.

(ii) V incurred three categories of costs to convert its manufacturing process to a just-in-time system. First, V paid B, a consultant, $250,000 in professional fees to implement the conversion of V's plant to a just-in-time system. Second, V paid C, a contractor, $100,000 to relocate and reconfigure V's manufacturing equipment from an assembly line layout to a configuration of cells. Third, V paid D, a consultant, $50,000 to train V's employees in the just-in-time manufacturing process.

(iii) The amounts paid by V to B, C, and D are not amounts to acquire, create, or enhance an intangible identified in paragraph (c) or (d) of this section or to facilitate such an acquisition, creation, or enhancement. In addition, the amounts do not create a separate and distinct intangible asset within the meaning of paragraph (b)(3) of this section. Accordingly, the amounts paid to B, C, and D are not required to be capitalized under this section. While the amounts produce long term benefits to V in the form of reduced inventory stockpiles, improved product quality, and increased efficiency, these benefits, without more, are not intangible assets for which capitalization is required under this section unless the Internal Revenue Service publishes guidance identifying these benefits as an intangible asset for which capitalization is required.

Example 7. Defense of business reputation. (i) X, an investment adviser, serves as the fund manager of a money market investment fund. X, like its competitors in the industry, strives to maintain a constant net asset value for its money market fund of $1.00 per share. During 2003, in the course of managing the fund assets, X incorrectly predicts the direction of market interest rates, resulting in significant investment losses to the fund. Due to these significant losses, X is faced with the prospect of reporting a net asset value that is less than $1.00 per share. X is not aware of any investment adviser in its industry that has ever reported a net asset value for its money market fund of less than $1.00 per share. X is concerned that reporting a net asset value of less than $1.00 per share will significantly harm its reputation as an investment adviser, and could lead to litigation by shareholders. X decides to contribute $2,000,000 to the fund in order to raise the net asset value of the fund to $1.00 per share. This contribution is not a loan to the fund and does not give X any ownership interest in the fund.

(ii) The $2,000,000 contribution is not an amount paid to acquire, create, or enhance an intangible identified in paragraph (c) or (d) of this section or to facilitate such an acquisition, creation, or enhancement. In addition, the amount does not create a separate and distinct intangible asset within the meaning of paragraph (b)(3) of this section. Accordingly, the amount contributed to the fund is not required to be capitalized under this section. While the amount serves to protect the business reputation of the taxpayer and may protect the taxpayer from litigation by shareholders, these benefits, without more, are not intangible assets for which capitalization is required under this section unless the Internal Revenue Service publishes guidance identifying these benefits as an intangible asset for which capitalization is required.

(m) *Amortization.* For rules relating to amortization of certain intangible assets, see § 1.167(a)–3.

(n) *Intangible interests in land.* [Reserved].

(o) *Effective Date*—(1) *In general.* This section applies to amounts paid or incurred on or after the date the final regulations are published in the **Federal Register**.

(2) *Automatic consent to change method of accounting.* A taxpayer seeking to change a method of accounting to comply with this section must follow the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (Revenue Procedure 2002–9 or its successor). Any change in method of accounting to comply with this section must be made using an adjustment under section 481(a). However, for this purpose, the adjustment under section 481(a) is determined by taking into account only amounts paid or incurred on or after the date the final regulations are published in the **Federal Register**. The final regulations may provide additional terms and conditions for changes under this paragraph (o)(2).

Par. 4. Section 1.446–5 is added to read as follows:

§ 1.446–5 Debt issuance costs.

(a) *In general.* This section provides rules for allocating debt issuance costs over the term of the debt. For purposes of this section, the term *debt issuance costs* means those transaction costs incurred by an issuer of debt (that is, a borrower) that are required to be capitalized under § 1.263(a)–4(e). If these costs are otherwise deductible, they are deductible by the issuer over the term of the debt as determined under paragraph (b) of this section.

(b) *Method of allocating debt issuance costs*—(1) *In general.* Solely for purposes of determining the amount of debt issuance costs that may be deducted in any period, these costs are treated as if they adjusted the yield on the debt. To effect this, the issuer treats the costs as if they decreased the issue price of the debt. See § 1.1273–2 to

determine issue price. Thus, debt issuance costs increase or create original issuance discount and decrease or eliminate bond issuance premium.

(2) *Original issue discount.* Any resulting original issue discount is taken into account by the issuer under the rules in § 1.163–7, which generally require the use of a constant yield method (as described in § 1.1272–1) to compute how much original issue discount is deductible for a period. However, see § 1.163–7(b) for special rules that apply if the total original issue discount on the debt is de minimis.

(3) *Bond issuance premium.* Any remaining bond issuance premium is taken into account by the issuer under the rules of § 1.163–13, which generally require the use of a constant yield method for purposes of allocating bond issuance premium to accrual periods.

(c) *Example.* The following example illustrates the rules of this section:

Example. (i) On January 1, 2004, X borrows $10,000,000. The principal amount of the loan ($10,000,000) is repayable on December 31, 2008, and payments of interest in the amount of $500,000 are due on December 31 of each year the loan is outstanding. X incurs debt issuance costs of $130,000 to facilitate the borrowing.

(ii) Under § 1.1273–2, the issue price of the loan is $10,000,000. However, under paragraph (b) of this section, X reduces the issue price of the loan by the debt issuance costs of $130,000, resulting in an issue price of $9,870,000. As a result, X treats the loan as having original issue discount in the amount of $130,000 (stated redemption price at maturity of $10,000,000 minus the issue price of $9,870,000). Because this amount of original issue discount is more than a de minimis amount (within the meaning of § 1.1273–1(d)), X must allocate the original issue discount to each year based on the constant yield method described in § 1.1272–1(b). See § 1.163–7(a). Based on this method and a yield of 5.30%, compounded annually, the original issue discount is allocable to each year as follows: $23,385 for 2004, $24,625 for 2005, $25,931 for 2006, $27,306 for 2007, and $28,753 for 2008.

(d) *Effective date.* This section applies to debt issuance costs incurred for debt instruments issued on or after the date final regulations are published in the **Federal Register**.

(e) *Accounting method changes*—(1) *Consent to change.* An issuer required to change its method of accounting for debt issuance costs to comply with this section must secure the consent of the Commissioner in accordance with the requirements of § 1.446–1(e). Paragraph (e)(2) of this section provides the Commissioner's automatic consent for certain changes.

(2) *Automatic consent.* The Commissioner grants consent for an issuer to change its method of accounting for debt issuance costs incurred for debt instruments issued on or after the date final regulations are published in the **Federal Register**. Because this change is made on a cut-off basis, no items of income or deduction are omitted or duplicated and, therefore, no adjustment under section 481 is allowed. The consent granted by this paragraph (e)(2) applies provided—

(i) The change is made to comply with this section;

(ii) The change is made for the first taxable year for which the issuer must account for debt issuance costs under this section; and

(iii) The issuer attaches to its federal income tax return for the taxable year containing the change a statement that it has changed its method of accounting under this section.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG–122380–02]

RIN 1545–BA72

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document provides advance notice of proposed rulemaking to amend the regulations governing practice before the Internal Revenue Service, which appear in the Code of Federal Regulations and in pamphlet form as Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Service. This document invites individuals and organizations to submit comments on revising Circular No. 230 to address certain issues regarding standards of practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and appraisers who represent taxpayers before the Service.

DATES: Submit comments on or before February 18, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–122380–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:ITA:RU (REG–122380–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, persons may submit comments electronically via the IRS Internet site at: *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning issues for comment, Richard Goldstein at (202) 622–7820 or Brinton T. Warren (202) 622–4940; concerning submissions of comments, LaNita Van Dyke, (202) 622–7180; (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department and, after notice and an opportunity for a proceeding, to suspend or disbar from practice before the Treasury Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330. Pursuant to section 330, the Secretary, in Circular No. 230 (31 CFR part 10), published regulations that authorize the Director of Practice to act upon applications for enrollment to practice before the Service, to institute proceedings for suspension or disbarment from practice before the Service, to make inquiries with respect to matters under the Director's jurisdiction, and to perform such other duties as are necessary to carry out these functions.

The regulations were most recently amended on July 26, 2002, (67 FR 48760) to clarify the general standards of practice before the Service. In the preamble to those amendments to the regulations, the Treasury Department and the Service stated their intention to issue a second notice of proposed rulemaking to re-propose amendments to regulations governing standards for tax shelter opinions. The Treasury Department and the Service also stated their intention to issue an advanced notice of proposed rulemaking covering additional nonshelter matters pertaining to practice before the Service.

Contemporaneously with the efforts to address issues affecting practice, the Treasury Department and the Service are reorganizing the Office of the Director of Practice to enhance its

effectiveness. As part of the reorganization, the authority to supervise the Office of the Director of Practice has been delegated to the Office of the Senior Counselor to the Commissioner. The authority to make the agency decision in disciplinary proceedings when decisions by Administrative Law Judges are appealed has also been delegated to the Senior Counselor to the Commissioner. The Office of Senior Counselor to the Commissioner observes an ''ethical wall'' ensuring that the official who makes the agency decision in such disciplinary proceedings is not exposed to these cases prematurely. Another step in the reorganization is the possible renaming of the Office of the Director of Practice to the Office of Professional Responsibility. It also is contemplated that the Office of Senior Counselor to the Commissioner will have a centralized role in the selection of the Director of Practice. The Treasury Department and the Service are seeking public comment on this reorganization.

Special Analyses

It has been determined that this advance notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866.

Request for Comments

The Treasury Department and the Service invite comments on the following matters.

Director of Practice

1. Whether § 10.1 should be revised to rename the Director of Practice as the Director of the Office of Professional Responsibility.

2. Whether the authority to appoint the Director of Practice should be delegated to the office or person who supervises the Director of Practice. If not, to whom should the Secretary delegate the authority to appoint the Director of Practice?

3. Whether the review of an Administrative Law Judge's decision under § 10.78 should be delegated to the office or person who supervises the Director of Practice. If not, to whom should the Secretary delegate the authority under § 10.78 to review the Administrative Law Judge's decision in disciplinary proceedings when these decisions are appealed.

Definition of Practice and Who May Practice

1. Whether the definition of practice before the Service and the definition of practitioner in § 10.2 should be modified to specifically provide that return preparation by an individual not described in § 10.3(a) through (d) (''unenrolled return preparer'') is practice before the Service and that an unenrolled return preparer is a practitioner under Circular 230.

2. Whether § 10.3(b) should be revised to permit licensed accountants, and certified internal auditors, who are not certified public accountants, to practice before the Service.

3. Whether § 10.7(c)(1)(viii) should be revised to authorize the Director of Practice to modify the scope of limited practice by unenrolled return preparers, without further amendment to the regulations.

4. Whether the regulations should specifically provide the Director of Practice with authority to determine eligibility for limited practice by unenrolled return preparers under § 10.7(c)(1)(viii).

Enrolled Agents and Eligibility for Enrollment

1. Whether Enrolled Agents should be allowed to refer to themselves as ''Licensed Tax Professionals'' or another specified designation determined by the Service, in addition to or instead of the Enrolled Agent designation, to more fully describe the nature of the professional services that they provide.

2. Whether the regulations should set forth specific examples of acceptable descriptions of an Enrolled Agent's practice for advertisements.

3. Whether the Director of Practice should be authorized to determine, without requiring further amendment of the regulations, standards for the continuing professional education requirements of Enrolled Agents.

Sanctions and Disciplinary Proceedings

1. Whether the regulations should be amended to authorize a practitioner and the Director of Practice to enter into settlement agreements, with such agreements enforceable through the expedited procedures of § 10.82.

2. Whether the definition in the regulation of disreputable conduct should be amended to specifically include the willful failure of a practitioner who is a preparer to sign a return.

3. Whether, in order to facilitate the timely adjudication of disciplinary proceedings instituted under § 10.60, the regulations should be amended to provide that the failure of a practitioner to answer a complaint constitutes an automatic default in the proceeding, subject to a showing of good cause.

4. Whether the regulations should be amended to provide the parties to a proceeding instituted under § 10.60 the opportunity to obtain discovery through means such as interrogatories, requests for production of documents, and requests for admissions, in addition to depositions. Whether the regulations should define what discovery should be permitted. Whether the regulations should place limits on discovery.

5. Whether the protection afforded in the current regulation—that a party in a disciplinary proceeding is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts—is sufficient, or whether changes should be made to afford greater protection in a disciplinary proceeding, including the opportunity to question, in the presence of the Administrative Law Judge, any person whose statement is offered by the opposing party.

Contingent Fees

1. Whether contingent fees should be permitted in conjunction with a request for a private letter ruling or other prefiling document.

2. Whether the regulations should continue to permit a practitioner to charge a contingent fee for preparing, or for any advice rendered in connection with a position taken or to be taken on, an amended return or claim for refund.

3. Whether the prohibition on contingent fees should be expanded to permit contingent fees only for amended returns or claims for refund when the client's taxable income on the amended return or claim for refund is less than $50,000 (or another amount determined with reference to financial need).

Confidentiality Agreements

1. Whether the regulations should prohibit practitioners from entering into agreements with clients that, in violation of applicable state professional rules or applicable state law, restrict a practitioner from providing relevant tax advice to other similarly situated taxpayers.

2. Whether the regulations should prohibit, irrespective of applicable state professional rules or applicable state law, the agreements identified above.

Pamela F. Olson,

Assistant Secretary for Tax Policy.

[FR Doc. 02–31989 Filed 12–18–02; 8:45 am]

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POSTAL SERVICE

39 CFR Part 111

Hazardous Materials: Proposed Domestic Mail Manual Revisions for Division 6.2 Infectious Substances and Other Related Changes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise the mailing standards in *Domestic Mail Manual* (DMM) C023 related to the requirements and packaging standards for mailable types of Division 6.2 infectious substances. These DMM revisions would adopt some of the regulatory and packaging changes for infectious substances that the U. S. Department of Transportation (DOT) made to Title 49 *Code of Federal Regulations* (49 CFR) in the **Federal Register** final rule published on August 14, 2002 (67 FR 53118) and the subsequent change published on August 27, 2002 (67 FR 54967). If the revisions proposed by the Postal Service were adopted, they would provide a greater level of safety for handling and transporting mailable infectious substances in the mailstream.

The proposed changes would also facilitate domestic and international air transportation by aligning the changes with the current international standards for the transport of hazardous materials via air.

Other minor changes and clarifications are proposed to the hazardous materials mailing standards in DMM C021, C023, C024, and F010 to improve clarity and reduce misunderstanding; to ensure the packaging integrity of mailable hazardous materials during Postal Service handling; and to provide a greater level of safety for Postal Service employees and the public.

DATES: Comments must be received on or before January 21, 2003.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, U.S. Postal Service, 1735 North Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may be submitted via fax to 703–292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., Room 11800, Washington, DC 20260–1540.

FOR FURTHER INFORMATION CONTACT: Jane Stefaniak (703) 292–3548, Mail Preparation and Standards, United States Postal Service.

SUPPLEMENTARY INFORMATION: The carriage of U.S. mail by the United States Postal Service (Postal Service) is regulated by Title 39 *Code of Federal Regulations* (39 CFR). Unlike commercial carriers, the Postal Service is not subject to the Federal regulations of the U.S. Department of Transportation (DOT) in Title 49 *Code of Federal Regulations* (49 CFR). The Postal Service is, however, subject to the legal restrictions in Title 18 *United States Code* 1716 (18 U.S.C. 1716) which prohibits the mailing of ''* * * all disease germs, or scabs, and all other natural or artificial articles, compositions, or material which may kill or injure another, or injure the mails or other property * * *'' if that matter is outwardly or of its own force dangerous to life, health, or property. Accordingly, for legal and safety reasons, the mailing standards for hazardous materials in the *Domestic Mail Manual* (DMM) not only closely adhere to the DOT regulations in 49 CFR, but also include many additional limitations and prohibitions.

In many instances, the Postal Service standards are more restrictive than the DOT requirements that apply to shipments being transported in domestic commerce. As an example, commercial shippers are permitted under the DOT regulations in 49 CFR to send certain types of flammable materials via air transportation. In contrast, the Postal Service prohibits the mailing of all flammable materials via air transportation.

Under Postal Service mailing standards, most hazardous materials are nonmailable. With few exceptions, the Postal Service generally limits the mailing of hazardous materials to only those materials that can be reclassified as an ORM–D material under the DOT Federal regulations in 49 CFR 173.144 and that can be renamed with the proper shipping name of ''Consumer Commodity.'' Additionally, mailable hazardous materials must meet the Postal Service quantity and packaging requirements, which in many instances are more restrictive than the DOT requirements in 49 CFR. Of all regulated hazardous materials, ORM–D materials present the lowest level of risk during handling and transportation.

Over the past few years, the Postal Service has encountered increasing difficulties with the commercial carriers who are contracted to provide air transportation services for the carriage of U.S. mail. Many carriers have refused to transport mailpieces containing mailable hazardous materials. In some instances, an air carrier has established a corporate policy not to carry hazardous materials. In other cases, an air carrier has refused to carry a specific type of hazardous material (*e.g.*, diagnostic specimens) because Postal Service packaging standards, which met Federal standards, did not meet the international standards followed by the air carrier industry.

To ensure an acceptable level of safety and to facilitate domestic and international transportation, the Postal Service is proposing to adopt some of the regulatory and packaging changes for Division 6.2 infectious substances that DOT adopted as revisions to 49 CFR in the **Federal Register** (67 FR 53118 and 67 FR 54967). The DOT changes are consistent with the current international standards found in the *Technical Instructions for the Safe Transport of Dangerous Goods* published by the International Civil Aviation Organization (ICAO).

It should also be noted that many of the DOT Federal regulations in 49 CFR involve requirements for the transport of hazardous materials that have moderate, high, or very high risk levels and that are shipped in very large quantities (exceeding 70 pounds in weight). Such hazardous materials are not permitted in the U.S. mail due to the legal restrictions in 18 U.S.C. 1716, concerns for employee and public safety, and Postal Service size and weight limitations. Accordingly, the Postal Service proposes to adopt only the new DOT regulations for Division 6.2 infectious substances that apply to materials that can be safely handled in the U.S. mail. As an example, the Postal Service would not adopt the new DOT bulk packaging options for regulated medical waste because under DOT regulations in 49 CFR, a bulk packaging is defined as a receptacle that has a capacity greater than 450L (119 gallons) for liquid materials or a net mass greater than 400 kg (882 pounds) for solid materials. As established by law, the maximum size and weight limits per mailpiece are 70 pounds and 108 inches in combined length and girth (130 inches for Parcel Post). A bulk packaging receptacle as defined by DOT would be nonmailable in the U.S. mail because it would exceed the maximum size and weight limits for mailing, while also posing an unacceptable risk level during Postal Service transport and handling.

In this proposed rule, the Postal Service proposes the adoption of the following changes to the mailing standards for Division 6.2 infectious substances:

• New classification criteria for Division 6.2 infectious substances based on the defining criteria developed by the World Health Organization (WHO) and consistent with the DOT Federal regulations in 49 CFR for domestic transport and the ICAO technical instructions for international transport.

• New DOT packaging requirements that are applicable to the mailable types of Division 6.2 materials and consistent with the ICAO technical instructions. For safety reasons, the proposed Postal Service volume limits may be lower than the DOT limits in some instances.

• New DOT Federal requirements that regulate diagnostic specimens in Risk Group 2, 3, or 4 as hazardous materials.

• Revisions and modifications in the new DOT Federal regulations related to the definitions of Division 6.2 materials and use of the biohazard symbol.

In addition, the Postal Service is also proposing a few minor clarifications and changes to the hazardous materials standards and certain related standards in DMM C021, C023, C024, and F010. These proposed clarifications and changes would improve clarity in the standards and reduce misunderstanding. They would also improve packaging integrity for medical and sharps waste and provide a greater level of safety during handling for both Postal Service employees and the public. These proposed changes include:

• Minor revisions to the text in DMM C021 to improve clarity.

• Minor clarifications to the definitions in DMM C023.1.1 including added text in the definition for ''air'' transportation requirements to note that the Postal Service does not guarantee air transportation service for any class of mail. Air transportation service is usually provided for First-Class Mail®, Priority Mail®, and Express Mail® destined to zones 5 through 8, however, it is dependent on the ability of the Postal Service to procure an air carrier.

• Standardization of the terminology used in DMM C023 for identifying the different components required for the proper packaging of mailable hazardous materials.

• Expansion of the Registered Mail® service requirement in DMM C023.8.0 for use with mailable infectious substances to provide added security and safety during Postal Service handling. Currently only the infectious substances listed in 42 CFR 72.3(f) are required to be sent as Registered Mail. This proposal would require that all mailable Risk Group 4 infectious substances be sent as Registered Mail.

• Expansion of the requirements in DMM C023.8.0 to establish that regulated medical waste would be subject to the same authorization requirements as sharps waste.

• Clarifications and minor changes to the requirements in DMM C023.8.0 for sharps waste containers to enhance the accuracy of the regulations and reduce misunderstanding of the standards. In addition, the Postal Service proposes additional limitations for sharps waste containers to ensure packaging integrity during Postal Service handling and to provide a greater level of safety for Postal Service employees and the public.

• Clarification of the required placement of the biohazard symbol in DMM C023.8.0 for mailable regulated and nonregulated Division 6.2 materials that are permitted in the mail.

• Standardization of the maximum weight limit in DMM C023 for several different types of mailable hazardous materials as 25 pounds or less. This change would affect nonflammable compressed gasses, matches, medical waste, sharps, and nonspillable wet batteries.

• Reinstatement of former DMM C024.18.0 (DMM Issue 56) with revised text to clarify the mailability of odd-shaped items in paper envelopes and to support the restrictions for harmful matter in DMM C021.

• Revisions to DMM F010 that would prohibit the use of the ancillary service endorsement ''Change Service Requested'' on Priority Mail, First-Class Mail, Standard Mail, and Package Services mail containing mailable perishable matter (including live animals) under DMM C022, hazardous materials under DMM C023, and restricted matter under DMM C024. Also, a revision to require a return or forwarding endorsement on Standard Mail containing mailable perishable matter, hazardous materials, or restricted matter.

A phase-in period through April 30, 2003 is proposed for mailer implementation of the new packaging requirements for diagnostic specimen mailpieces using a business reply mail format and sharps waste mailpieces using a merchandise return service format. This time period will allow mailers to exhaust any existing packaging stock presently in circulation.

The Postal Service believes that the adoption of the changes in this proposed rule would help to ensure an acceptable level of security and safety during Postal Service handling for the types and quantities of hazardous materials that are permitted in the U.S. mail.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the *Domestic Mail Manual* (DMM) incorporated by reference in the *Code of Federal Regulations*. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Domestic Mail Manual* (DMM) as follows:

Domestic Mail Manual (DMM)

* * * * *

C Characteristics and Content

C000 General Information

* * * * *

C020 Restricted or Nonmailable Articles and Substances

C021 Articles and Substances Generally

* * * * *

2.0 NONMAILABLE ARTICLES AND SUBSTANCES—GENERAL

2.1 Basic Information

[Delete the last two sentences of 2.1 and insert the following text to read as follows:]

* * * The mailability standards that apply to perishable, hazardous, and restricted matter are detailed in C022, C023, and C024, respectively. Publication 52, *Hazardous, Restricted, and Perishable Mail,* contains additional clarification and further describes the conditions of preparation and packaging under which the USPS accepts for mailing potentially harmful matter that is otherwise nonmailable. Publication 52 also contains detailed information on the mailability of specific hazardous materials.

* * * * *

3.0 INJURIOUS AND HARMFUL ARTICLES

3.1 General

* * * * *

[Revise item b to read as follows:]

b. All poisonous animals, except scorpions mailed for medical research purposes or for the manufacture of

antivenom; all poisonous insects; all poisonous reptiles; and all types of snakes, turtles, and spiders.

* * * * *

3.2 Hazardous Materials

[Revise the first sentence to read as follows:]

Harmful matter also includes regulated hazardous materials as defined in C023 that are likely to harm USPS employees or to destroy, deface, or otherwise damage mail or postal equipment.* * *

4.0 MARKING

* * * * *

4.2 Addressing

[Revise 4.2 to read as follows:]

For any matter mailed under the provisions in C020, the recipient's name and address must be affixed or applied directly to the mailpiece using a material or method that is not water-soluble and not easily smeared or rubbed off. Except for diagnostic specimen mailpieces using a business reply mail format and nonregulated materials, a return address that includes the sender's name and address must appear on all matter mailed under C020. The return address, when required, must be applied using a material or method that is not water-soluble and not easily smeared or rubbed off.

4.3 Warning Label

[Revise the last sentence in 4.3 to read as follows:]

* * * See C023 for the warning label requirements that apply to the mailing of hazardous materials.

* * * * *

C023 Hazardous Materials

Summary

[Revise the Summary to read as follows:]

C023 describes the general standards, restrictions, and prohibitions that apply to the mailability of hazardous materials.

1.0 GENERAL

1.1 Definitions

* * * * *

[Revise the last sentence in item a to read as follows:]

a. * * * In international commerce, hazardous materials are known as dangerous goods.

[At the end of item b, add a new sentence to read as follows:]

b. * * * Almost all limited quantity materials are nonmailable.

[At the end of item c, add a new sentence to read as follows:]

c. * * * ORM–D materials having the proper shipping name of ''consumer commodity'' are mailable subject to USPS quantity and packaging standards.

* * * * *

[Revise items e and f to read as follows:]

e. *Air transportation requirements,* for the purposes of C023 only, apply to all mailable hazardous materials sent at the First-Class Mail, Priority Mail, or Express Mail rates. All mailable hazardous materials sent at those rates must meet the requirements that apply to air transportation. Mailable hazardous materials sent at any of those rates may or may not be transported via air depending on the distance between the point of origination and the point of destination, and the ability of the USPS to obtain an air carrier between those points.

f. *Surface transportation requirements,* for the purposes of C023 only, apply to all mailable hazardous materials sent at the Standard Mail or Package Services rates. All mailable hazardous materials sent at the Standard Mail or Package Services rates must meet the requirements that apply to surface transportation.

* * * * *

[Revise item h to read as follows:]

h. *Secondary container* is the packaging component into which the primary receptacle(s) and any required absorbent and cushioning material is securely placed. The packaging of certain mailable hazardous materials do not require the use of a secondary container.

[Revise item i to read as follows:]

i. *Outer shipping container* is the exterior packaging component into which a primary receptacle, along with any required absorbent and cushioning material, and the secondary container (if required), are securely placed. The outer shipping container bears the addressing information along with all required markings.

1.2 U.S. Department of Transportation

[Revise 1.2 to read as follows:]

The U.S. Department of Transportation (DOT) regulates the surface and air carriage of hazardous materials within the United States via any means of transportation. The DOT regulations for the transport of hazardous materials are codified in Title 49, *Code of Federal Regulations* (49 CFR) 100–185. USPS mailing standards for hazardous materials generally adhere to 49 CFR, but also include many additional limitations and prohibitions.

[Renumber 1.3 through 1.9 as 1.4 through 1.10 and insert new 1.3 to read as follows:]

1.3 USPS Standards

The USPS standards generally restrict the mailing of hazardous materials to ORM–D materials with the proper shipping name of ''consumer commodity'' that meet USPS quantity limitations and packaging requirements. The few non-ORM–D materials permitted to be mailed are subject to the standards in C023. Detailed information on the mailability of specific hazardous materials is contained in Publication 52, *Hazardous, Restricted, and Perishable Mail.*

1.4 Hazard Class

* * * * *

[Renumber ''Exhibit 1.3 DOT Hazard Classes and Mailability Summary'' as ''Exhibit 1.4 DOT Hazard Classes and Mailability Summary.'']

* * * * *

1.6 Mailability Rulings

[In the first sentence, change ''package'' to ''mailpiece.'']

1.7 Warning Labels

[Change ''division 6.2 materials under 8.3'' and ''as required in 1.7'' to ''Division 6.2 materials under 8.5'' and ''as required in 1.8''.]

1.8 Package Markings

[Delete the last sentence in 1.8 and insert two new sentences to read as follows:]

* * * The designation ''ORM-D'' or ''ORM–D AIR'', as required, must be placed within a rectangle that is approximately 6.3 mm (¼ inch) larger on each side than the designation. Mailable ORM–D materials sent as Standard Mail or Package Services must also be marked on the address side as ''Surface Only'' or ''Surface Mail Only.''

1.9 Shipping Papers

[Revise 1.9 to read as follows:]

A shipper's declaration for dangerous goods (*i.e.*, shipping paper) prepared under 49 CFR 172.200 through 172.205 is required for certain types of hazardous materials when mailed. The shipping paper must be completed and signed in triplicate by the mailer. It must be affixed to the outside of the mailpiece within an envelope or similar carrier that can be easily opened and resealed to allow viewing of the document. Shipping papers are required as follows:

a. *Air transportation requirements.* Except for nonregulated materials sent under 8.3 or 8.10 and diagnostic specimens sent under 8.6, mailpieces containing mailable hazardous materials sent at the First-Class Mail, Priority

Mail, or Express Mail rates must include a shipping paper.

b. *Surface transportation requirements.* Except for nonregulated materials sent under 8.3 or 8.10 and mailable ORM–D materials, mailpieces containing mailable hazardous materials sent at the Standard Mail or Package Services rates must include a shipping paper.

1.10 Air Transportation Prohibitions

[Revise the first two sentences in 1.10 to read as follows (the remainder of 1.10 is unchanged):]

All mailable hazardous materials sent at the First-Class Mail, Priority Mail, or Express Mail rates must meet air transportation requirements. The following types of hazardous materials that are prohibited from carriage on air transportation must not be sent at the First-Class Mail, Priority Mail, or Express Mail rates:

* * * * *

2.0 EXPLOSIVES (HAZARD CLASS 1)

2.1 Definition

[In the second sentence, change ''Exhibit 1.3'' to ''Exhibit 1.4''.]

2.2 Mailability

[In the second sentence, change ''division 1.4'' to ''Division 1.4S.'']

3.0 GASES (HAZARD CLASS 2)

3.1 Definition

[In item b, change ''division 2.1 or 2.3'' to ''Division 2.1 or 2.3''.]

3.2 Mailability

[In the second, third, and fourth sentences, change ''division'' to ''Division.'']

3.3 Container

[Revise 3.3 to read as follows:]

An other-than-metal primary receptacle containing a mailable gas may be acceptable if the water capacity of the primary receptacle is 4 fluid ounces (7.22 cubic inches) or less per mailpiece and the primary receptacle meets 49 CFR requirements. Mailable nonflammable and flammable compressed gases are acceptable in metal primary receptacles that have a water capacity up to 33.8 fluid ounces (1 liter or 61.0 cubic inches), depending on their internal pressure. A DOT 2P container must be used as the primary receptacle if the internal pressure is from 140 to 160 psig at 130°F (55°C). A DOT 2Q container must be used as the primary receptacle if the pressure is from 161 to 180 psig at 130°F (55°C). A container with an internal pressure over 180 psig at 130°F (55°C) is prohibited from mailing. Mailable flammable compressed gases are restricted to 33.8 fluid ounces (1 liter) per mailpiece. Mailable nonflammable compressed gasses are permitted in individual 33.8 fluid ounce (1 liter) containers that must be securely packed within an outer shipping container. Each mailpiece must not exceed a total of weight of 25 pounds.

3.4 Marking

[In the first sentence, change ''Surface Mail Only'' to '' ''Surface Only'' or ''Surface Mail Only.'' '']

4.0 FLAMMABLE AND COMBUSTIBLE LIQUIDS (HAZARD CLASS 3)

* * * * *

4.2 Flammable Liquid Mailability

[In items a and b, change ''secondary packaging'' to ''secondary container''; change ''outer packaging'' to ''outer shipping container''; and change ''Surface Mail Only'' to '' ''Surface Only'' or ''Surface Mail Only.'' '']

4.3 Combustible Liquid Mailability

[In items a and b, change ''secondary packaging'' to ''secondary container''; change ''outer packaging'' to ''outer shipping container''; and change ''Surface Mail Only'' to '' ''Surface Only'' or ''Surface Mail Only.'' '']

[Revise item c to read as follows:]

c. For air or surface transportation, if the flashpoint is above 200°F (93°C) the material is not regulated as a hazardous material. Such nonregulated materials must be properly and securely packaged to prevent leakage under the general packaging requirements in C010.

4.4 Cigarette Lighters

[In the second sentence, change ''division 2.1'' to ''Division 2.1''.]

[In item c, change ''Surface Mail Only'' to '' ''Surface Only'' or ''Surface Mail Only.'' '']

5.0 FLAMMABLE SOLIDS (HAZARD CLASS 4)

* * * * *

5.2 Mailability

[Change ''outer packaging'' to ''outer shipping container'' and change ''Surface Mail Only'' to '' ''Surface Only'' or ''Surface Mail Only.'' '']

5.3 Matches

* * * * *

[Revise items c and d to read as follows:]

c. They are tightly packed in a securely sealed primary receptacle to prevent any shifting or movement that could cause accidental ignition by rubbing against adjoining items. The primary receptacle(s) is placed securely within an outer shipping container made of fiberboard, wood, or other equivalent material. Multiple primary receptacles may be placed in a single outer shipping container. The address side of the mailpiece must be marked ''Surface Only'' or ''Surface Mail Only'' and ''Book Matches,'' ''Strike-on-Card Matches,'' or ''Card Matches,'' as appropriate. A shipping paper is not required.

d. The gross weight of each mailpiece is not more than 25 pounds.

6.0 OXIDIZING SUBSTANCES, ORGANIC PEROXIDES (HAZARD CLASS 5)

* * * * *

6.2 Mailability

[Revise 6.2 to read as follows:]

Oxidizing substances and organic peroxides are prohibited in international mail. For domestic mail, a material that can qualify as an ORM–D material is permitted via air or surface transportation. Liquid materials must be enclosed within a primary receptacle having a capacity of 1 pint or less; the primary receptacle(s) must be surrounded by absorbent cushioning material and held within a leak-resistant secondary container that is packed within a strong outer shipping container. Solid materials must be contained within a primary receptacle having a weight capacity of 1 pound or less; the primary receptacle(s) must be surrounded with cushioning material and packed within a strong outer shipping container. Each mailpiece may not exceed a total weight of 25 pounds. The address side of each mailpiece must be plainly and durably marked with ''ORM–D AIR'' or ''ORM–D,'' as applicable, immediately following or below the proper shipping name. A mailable Class 5 material sent via surface transportation must be marked ''Surface Mail'' or ''Surface Mail Only'' on the address side. A mailable material sent via air transportation must bear a shipper's declaration for dangerous goods.

7.0 TOXIC SUBSTANCES (HAZARD CLASS 6, DIVISION 6.1)

7.1 Definitions

[In the first sentence, change ''division 6.1'' to ''Division 6.1''.]

7.2 Mailability

[In the second sentence, change ''division 6.1'' to ''Division 6.1''.]

7.3 Authorized Parties

[In the first sentence, change ''division 6.1'' to ''Division 6.1''.]

7.4 Packaging and Marking

[In item a, change ''inner receptacle(s)'' to ''primary receptacle(s)''; change ''secondary packaging'' to ''secondary container''; change ''outer packaging'' to ''outer shipping container''; and change ''Surface Mail Only'' to ''''Surface Only'' or ''Surface Mail Only.'' '']

[In item b, change ''secondary leakproof (for liquids) or siftproof (for solids) packaging'' to ''leakproof (for liquids) or siftproof (for solids) secondary container''; change ''secondary packaging'' to ''secondary container''; change ''outer packaging'' to ''outer shipping container''; and change ''Surface Mail Only'' to ''''Surface Only'' or ''Surface Mail Only.'' '']

* * * * *

8.0 INFECTIOUS SUBSTANCES (HAZARD CLASS 6, DIVISION 6.2)

[*Revise 8.0 to read as follows:*]

8.1 General

Division 6.2 includes infectious substances (*i.e.*, etiologic agents), biological products, cultures and stocks, diagnostic (clinical) specimens, regulated medical waste, sharps waste, toxins, and used health care products. Division 6.2 materials are not permitted in international mail or domestic mail, except when they are intended for medical or veterinary use, research, or laboratory certification related to the public health; and only when such materials are properly prepared for mailing to withstand shocks, pressure changes, and other conditions related to ordinary handling in transit. Mailable Division 6.2 materials sent as international mail must meet the standards in *International Mail Manual* 135. For domestic mail, mailable Division 6.2 materials must meet the applicable standards in 8.0. Unless otherwise noted, all mailable Division 6.2 materials in Risk Group 2, 3, or 4 must be prepared to meet air transportation requirements.

8.2 Definitions

The terms used in the standards for Division 6.2 materials are defined as follows:

a. *Division 6.2 (infectious substance)* means a material known to contain or suspected of containing a pathogen. A pathogen is a virus or microorganism (including its viruses, plasmids, or other genetic elements, if any) or a proteinaceous infectious particle (prion) that has the potential to cause disease in humans or animals. A Division 6.2 material must be assigned to a risk group as defined in 8.2f. Assignment to a risk group is based on the known medical condition and history of the source patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgment concerning individual circumstances of the source patient or animal. Infectious substances are subject to applicable requirements in 42 CFR 72 (Interstate Shipment of Etiologic Agents).

b. *Biological product* means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product used in the prevention, diagnosis, treatment, or cure of diseases in humans or animals. A biological product includes a material manufactured and distributed in accordance with one of the following provisions: 9 CFR 102 (Licenses for Biological Products); 9 CFR 103 (Experimental Products, Distribution, and Evaluation of Biological Products Prior to Licensing); 9 CFR 104 (Permits for Biological Products); 21 CFR 312 (Investigational New Drug Application); 21 CFR 314 (Applications for FDA Approval to Market a New Drug); 21 CFR 600–680 (Biologics); or 21 CFR 812 (Investigational Device Exemptions). A biological product known to contain or suspected of containing a pathogen in Risk Group 2, 3, or 4 must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate, unless otherwise excepted by standard.

c. *Cultures and stocks* means a material prepared and maintained for growth and storage and containing a Risk Group 2, 3, or 4 infectious substance.

d. *Diagnostic (clinical) specimen* means any human or animal material, including excreta, secreta, blood and its components, tissue, and tissue fluids being transported for diagnostic or investigational purposes, but excluding live infected animals. A diagnostic specimen is not assigned a UN identification number unless the source patient or animal has or may have a serious human or animal disease from a Risk Group 4 pathogen, in which case it must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate. Assignment to UN 2814 or UN 2900 is based on known medical condition and history of the patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgment concerning individual circumstances of the source patient or animal.

e. *Regulated medical waste* means a waste material (other than a sharp) known to contain or suspected of containing an infectious substance in Risk Group 2 or 3 and generated in the diagnosis, treatment, or immunization of human beings or animals; research on the diagnosis, treatment, or immunization of human beings or animals; or the production or testing of biological products. Regulated medical waste containing an infectious substance in Risk Group 4 must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate. Regulated medical waste classified in Risk Group 4 (including sharps waste) is nonmailable.

f. *Risk group* means a ranking of a microorganism's ability to cause injury through disease. A risk group is defined by criteria developed by the World Health Organization (WHO) that are based on the severity of the disease caused by the organism, the mode and relative ease of transmission, the degree of risk to both an individual and a community, and the reversibility of the disease through the availability of known and effective preventive agents and treatment. There is no relationship between a risk group and a DOT packing group. The mailer is responsible for accurately ranking a mailable material within the correct risk group. Exhibit 8.2f details the criteria for each risk group according to the level of risk.

Exhibit 8.2f Risk Group Criteria

Risk group	Pathogen	Risk to individuals	Risk to community
4	A pathogen that usually causes serious human or animal disease and that can be readily transmitted from one individual to another, directly or indirectly, and for which effective treatments and preventive measures are not usually available..	High	High

Risk group	Pathogen	Risk to individuals	Risk to community
3	A pathogen that usually causes serious human or animal disease but does not ordinarily spread from one infected individual to another, and for which effective treatments and preventive measures are available..	High	Low.
2	A pathogen that can cause human or animal disease but is unlikely to be a serious hazard, and, while capable of causing serious infection on exposure, for which there are effective treatments and preventive measures available and the risk of spread of infection is limited..	Moderate	Low.
1	A microorganism that is unlikely to cause human or animal disease. A material containing only such microorganisms is not subject to regulation as a hazardous material, but it is subject to the packaging requirements in 8.10, unless otherwise noted in 8.0..	None or Very Low	None or Very Low.

g. *Sharps* means any object contaminated with a pathogen or that may become contaminated with a pathogen through handling or during transportation and that is also capable of cutting or penetrating skin or a packaging material. Sharps include used medical waste such as needles, syringes, scalpels, broken glass, culture slides, culture dishes, broken capillary tubes, broken rigid plastic, and exposed ends of dental wires. Sharps waste classified in Risk Group 4 is nonmailable.

h. *Toxin* means a Division 6.1 material from a plant, animal, or bacterial source. A toxin containing an infectious substance or a toxin contained in an infectious substance must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate.

i. *Used health care product* means a medical, diagnostic, or research device or piece of equipment, or a personal care product used by consumers, medical professionals, or pharmaceutical providers that does not meet the definition of a diagnostic specimen, biological product, or regulated medical waste, is contaminated with potentially infectious body fluids or materials, and is not decontaminated or disinfected to remove or mitigate the infectious hazard prior to transportation. A used health care product classified in Risk Group 4 is nonmailable.

8.3 Nonregulated Materials

The following materials are not subject to regulation as Division 6.2 hazardous materials and are mailable when the packaging requirements in 8.10 are met:

a. A diagnostic (clinical) specimen known to contain or suspected of containing a microorganism in Risk Group 1, or that does not contain a pathogen. Also, a diagnostic specimen in which the pathogen has been neutralized or inactivated so that exposure to it cannot cause disease.

b. A biological product known to contain or suspected of containing a microorganism in Risk Group 1, or that does not contain a pathogen. Also any biological product, including an experimental product or component of a product, subject to federal approval, permit, or licensing requirements, such as those required by the Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS) or the U.S. Department of Agriculture (USDA).

c. Blood collected for blood transfusion or the preparation of blood products; blood products; tissues intended for use in surgical procedures; and human cell, tissues, and cellular and tissue-based products regulated under authority of the Public Health Service Act and/or the Food, Drug, and Cosmetic Act. Also, blood collected for blood transfusion or the preparation of blood products and sent for testing as part of the collection process, except where the person collecting the blood has reason to believe it contains a pathogen in Risk Group 2 or 3, in which case the test sample must be packaged under 8.6.

d. A material, including a Division 6.2 waste, that previously contained an infectious substance that has been treated by steam sterilization, chemical disinfection, or other appropriate method, so it no longer meets the definition of an infectious substance in Risk Group 2, 3, or 4.

e. Forensic material in Risk Group 1 transported on behalf of a U.S. government, state, local, or Indian tribal government agency.

8.4 Packaging—General

All materials mailable under the provisions in 8.0 must be properly packaged. Exhibit 8.4a lists the specific reference in 8.0 under which each type of mailable material must be packaged.

Exhibit 8.4a Packaging References for Materials Mailable Under 8.0

Material	Risk group			
	1	2	3	4
Blood for Transfusion	8.10	8.6	8.6	NM
Biological Product	8.10	8.5	8.5	8.5
Culture or Stock	8.10	8.5	8.5	8.5
Diagnostic Specimen	8.10	8.6	8.6	8.5
Division 6.2 (Infectious Substance)	8.10	8.5	8.5	8.5
Forensic Material	8.10	8.9	8.9	8.5
Regulated Medical Waste	8.7	8.7	8.7	NM
Sharps	8.7	8.7	8.7	NM
Toxin (Division 6.2)	8.10	8.5	8.5	8.5
Treated Medical Waste	8.10	n/a	n/a	n/a
Used Health Care Product	8.8	8.8	8.8	NM

NM means nonmailable; n/a mean not applicable

8.5 Packaging of Division 6.2 Infectious Substances

Division 6.2 materials include infectious substances (etiologic agents), biological products, cultures or stocks, and toxins known or suspected to contain a Risk Group 2, 3, or 4 pathogen. It also includes diagnostic specimens known or suspected to contain a Risk Group 4 pathogen. The packaging of Division 6.2 infectious substances is subject to these standards:

a. All Division 6.2 materials must meet the packaging requirements in 49 CFR 173.196 and 42 CFR 72.3. Either the primary receptacle or the secondary container must be capable of withstanding, without leakage, an internal pressure that produces a pressure differential of not less than 0.95 bar, 14 psi (95 kPa), and temperatures in the range of −40°F to 131°F (−40°C to 55°C) as required by 49 CFR 173.196.

b. The material must be packaged in a securely sealed and watertight primary receptacle (test tube, vial, etc.) that is enclosed in another watertight and durable secondary container that is securely sealed. Several primary receptacles may be enclosed in the secondary container if there is adequate cushioning material between them to prevent breakage during ordinary handling, and if the total volume of the material in all enclosed primary receptacles does not exceed 50 ml for liquids and 50 g for solids. The primary receptacle(s) and the secondary container must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2).

c. The space between the primary receptacle(s) and the secondary container at the top, bottom, and sides must contain enough absorbent material to take up the entire contents of the primary receptacle(s) in case of breakage or leakage.

d. The primary receptacle(s) and the secondary container must be securely enclosed in an outer shipping container constructed of fiberboard or other equivalent material. No external surface of the outer shipping container may be less than 3.9 inches (100 mm) as required by 49 CFR 173.196. An itemized list of the contents of the primary receptacle(s) must be enclosed between the secondary container and the outer shipping container.

e. Each mailpiece must be designed and constructed so that, if it were subject to the environmental and test conditions in 49 CFR 178.609, there would be no release of the contents to the environment and no significant reduction in the effectiveness of the packaging.

f. The address side of the mailpiece must bear the ''Etiologic Agents/Biohazard Material'' label required by 42 CFR 72.3(d) and must be sent First-Class Mail or Priority Mail using Registered Mail service. Each mailpiece must be marked on the address side with the proper shipping name and UN number of the material (*e.g.*, ''UN 2814, Infectious Substances, Affecting Humans'' or ''UN 2900, Infectious Substances, Affecting Animals''). Each mailpiece must bear a DOT Class 6 label for infectious substances (etiologic agents), proper UN package specification markings, and orientation markings. A shipping paper is required.

g. Articles that include dry ice as a refrigerant for the infectious substance must meet the requirements of 42 CFR 72.3(c) and 49 CFR 173.196(b)(2)(ii).

8.6 Packaging for Diagnostic Specimens in Risk Group 2 or 3

A diagnostic (clinical) specimen known or suspected to contain a Risk Group 4 pathogen must be packaged under 8.5. A diagnostic specimen classified in Risk Group 1 must be packaged under 8.10. A diagnostic specimen classified in Risk Group 2 or 3 and that meets the definition in 8.2d must be sent as First-Class Mail or Priority Mail. Such materials must be packaged in a triple packaging, consisting of a primary receptacle, secondary container, and outer shipping container. The following specific packaging requirements apply:

a. *Liquid Diagnostic (Clinical) Specimens.*

(1) The specimen must be contained in a leakproof and securely sealed primary receptacle. A single primary receptacle may not contain more than 500 ml of a specimen. Multiple primary receptacles are permitted in a single mailpiece if the mailpiece does not contain more than 4,000 ml. The primary receptacle(s) must be surrounded by absorbent material capable of taking up the entire liquid contents if the primary receptacle(s) leak.

(2) The primary receptacle(s) and the absorbent material must be securely packed within a secondary container in such a way that, under normal conditions of transport, the primary receptacle cannot break, be punctured, or leak its contents into the secondary container. Each primary receptacle must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2).

(3) The secondary container must be leakproof, securely sealed, and placed within a strong outer shipping container having suitable cushioning material such that any leakage of the contents does not impair the protective properties of the cushioning material or the outer shipping container.

(4) The primary receptacle(s) or the secondary container must be capable of withstanding, without leakage, an internal pressure producing a pressure differential of not less than 0.95 bar, 14 psi (95 kPA). The completed mailpiece must be capable of successfully passing the drop test in 49 CFR 178.603 at a drop height of at least 1.2 meters (3.9 feet). The address side of the outer shipping container must be clearly and durably marked ''Diagnostic Specimen.'' A shipping paper is not required.

b. *Solid Diagnostic Specimens.*

(1) The primary receptacle must be siftproof with a capacity of not more than 500 g (1.1 pounds). The primary receptacle must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2).

(2) If several fragile primary receptacles are placed in a single secondary container, they must be individually wrapped or separated to prevent contact between them. The secondary container must be siftproof to contain the contents if the primary receptacle(s) leak.

(3) The outer shipping container may not exceed 4 kg (8.8 pounds) capacity. The outer shipping container must be clearly and durably marked ''Diagnostic Specimen.'' A shipping paper is not required.

8.7 Regulated Medical Waste and Sharps Waste

Regulated medical waste and sharps waste known to contain or suspected of containing an infectious substance in Risk Group 4 are nonmailable. Regulated medical waste and sharps waste as defined in 8.2e and 8.2g, respectively, and classified in Risk Group 1, 2 or 3 are permitted for mailing only using merchandise return service (see S923) with First-Class Mail or Priority Mail, subject to the following requirements:

a. *Authorization.* Each distributor or manufacturer of a complete regulated medical waste or sharps waste mailing kit, including containers, cartons, and any other related components intended for mailing such waste to a storage or disposal facility, must obtain authorization from the USPS prior to mailing. Before applying for authorization, each type of mailing kit must be tested and certified under the standards in 8.7d by an independent party. The manufacturer or distributor in whose name the authorization is

being sought must submit a written request to the Mail Preparation and Standards manager, USPS Headquarters (see G043 for address). The request for authorization must contain the following:

(1) An irrevocable 50,000 surety bond or letter of credit as proof of sufficient financial responsibility to cover disposal costs if the manufacturer (or distributor) ceases doing business before all its shipping containers are disposed of or to cover cleanup costs if spills occur while the containers are in USPS possession. The surety bond or letter of credit must be issued in the name of the manufacturer or distributor seeking the authorization and must name the USPS as the beneficiary or obligee, as appropriate.

(2) Address of the headquarters or general business office of the distributor or manufacturer seeking the authorization.

(3) Address of each disposal and storage site.

(4) List of all types of mailing kits to be covered by the request, a complete sample of each mailing kit, and proof of package testing certifications performed by the independent testing facility that subjected the packaging materials to the testing requirements in 8.7d.

(5) Copy of the proposed manifest to be used with all mailings.

(6) 24-hour toll free telephone number for emergencies.

(7) List of the types of waste to be mailed for disposal.

(8) Copy of the merchandise return service label to be used with each mailing kit.

b. *Packaging.* Regulated medical waste and sharps waste in Risk Group 4 are nonmailable. A waste material treated by steam sterilization, chemical disinfection, or other appropriate method, so it no longer meets the definition of an infectious substance in Risk Group 2, 3, or 4 must be packaged under 8.10. The packaging for regulated medical waste and sharps waste in Risk Group 1, 2, or 3 is subject to these standards:

(1) Regulated medical waste and sharps waste must be collected in a rigid, securely sealed, and leakproof primary receptacle. For sharps waste, the primary receptacle must also be puncture-resistant. The primary receptacle may not contain more than 50 ml (1.66 ounces) of residual waste liquid and may not have a maximum capacity that exceeds 3 gallons in volume. The primary receptacle must display the international biohazard symbol shown in Exhibit 8.7c(2). The primary receptacle must maintain its integrity when exposed to temperatures between 0° and 120°F.

(2) The primary receptacle must be packaged within a watertight secondary container or containment system. The secondary container may consist of more than one component. If one of the components is a plastic bag, it must be at least 3 ml in thickness and be used in conjunction with a strong fiberboard box. A plastic bag by itself does not meet the requirement for a secondary container. Several primary receptacles may be enclosed in a secondary container.

(3) The secondary container must be enclosed in a strong outer shipping container constructed of 200-pound grade corrugated fiberboard. The box certification must be displayed on the bottom of the fiberboard box. The joints and flaps of the outer shipping container must be securely taped, glued, or stitched to maintain the integrity of the container. When tape or glue is used to secure an outer shipping container, the material must be water-resistant. Fiberboard boxes with interlock bottom flaps (*i.e.*, easy-fold) are not permitted as outer shipping containers. The secondary container must fit securely within the outer shipping container to prevent breakage during ordinary processing.

(4) There must be enough material within a watertight barrier to absorb and retain three times the total liquid allowed within the primary receptacle (150 ml per primary receptacle) in case of leakage.

(5) Each mailpiece must not weigh more than 25 pounds.

(6) In each mailing kit, the authorized manufacturer or distributor must include a step-by-step instruction sheet that clearly details the proper sequence and method of kit assembly prior to mailing to prevent package failure during transport due to improper assembly.

c. *Mailpiece Labeling, Marking, and Documentation.* Regulated medical waste and sharps waste must meet the following requirements:

(1) Each primary receptacle and outer shipping container must bear a label, which cannot be detached intact, showing:

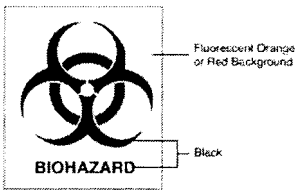
(a) The company name of the manufacturer or the distributor to which the mailing authorization is issued.

(b) The USPS Authorization Number.

(c) The container ID number (or unique model number) signifying that the packaging material is certified and that the manufacturer or distributor obtained the authorization required by 8.7a.

(2) The primary receptacle(s) and the outer shipping container must bear the international biohazard symbol in black with either a fluorescent orange or fluorescent red background as shown in Exhibit 8.7c(2).

Exhibit 8.7c(2) International Biohazard Symbol



(3) Each mailpiece must have a four-part waste manifest, which also serves as a shipping paper. The manifest must be affixed to the outside of the mailpiece in an envelope or similar carrier that can be easily opened and resealed to allow review of the document. The manifest must comply with all applicable requirements imposed by the laws of the state from which the kit is mailed. At a minimum, the information in Exhibit 8.7c(3) must be on the manifest.

Exhibit 8.7c(3)

Manifest for Regulated Medical Waste and Sharps Waste Containers

1. Generator (Mailer)
   a. Name.
   b. Complete address (not a Post Office box).
   c. Telephone number.
   d. Description of contents of mailing container. ''Regulated Medical Waste'' or ''Regulated Medical Waste—Sharps'' is required as appropriate.
   e. Date container was mailed.
   f. State permit number of approved facility in which contents are to be disposed.
2. Destination Facility (Disposal Site)
   Complete address (not a Post Office box).
3. Generator's (Mailer's) Certification
   The following certification statement must be printed on manifest:
   ''I certify that this container has been approved for the mailing of [insert either ''regulated medical waste'' or ''sharps waste,'' as appropriate], has been prepared for mailing in accordance with the directions for that purpose, and does not contain excess liquid or nonmailable material in violation of the applicable Postal Service regulations. I AM AWARE THAT FULL RESPONSIBILITY RESTS WITH THE GENERATOR (MAILER) FOR ANY VIOLATION OF 18

U.S.C. 1716 WHICH MAY RESULT FROM PLACING IMPROPERLY PACKAGED ITEMS IN THE MAIL. I also certify that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and in proper condition for carriage by air according to the national governmental regulations.''

This statement must be followed by printed or typewritten name of generator (mailer), signature of generator, and date signed.

4. Destination Facility (Storage or Disposal Site)

The following certification statement of receipt, treatment, and disposal must be printed on manifest:

''I certify that the contents of this container have been received, treated, and disposed of in accordance with all local, State, and Federal regulations.''

This statement must be followed by printed or typewritten name of an authorized recipient at destination facility, signature of authorized recipient, and date signed.

5. Transporter Intermediate Handler Other Than the Postal Service (If Different From Destination Facility)

a. Name.

b. Complete address (not a Post Office box).

c. Printed or typewritten name of transporter or intermediate handler.

d. Signature of transporter or intermediate handler and date signed.

6. Serialized Waste Manifests

Each waste manifest or mail disposal service shipping record must be serialized using a unique numbering system for identification purposes.

7. Comment Area

Each manifest must contain an area designated for entering comments or noting discrepancies.

8. Completion and Distribution of Waste Manifest

Each manifest must contain instructions for properly completing the four-part form. Copies of the form must be distributed as follows:

a. One copy must be kept by generator (mailer).

b. One copy must be kept by transporter or intermediate handler for 90 days.

c. One copy must be kept by destination facility for 90 days.

d. One copy must be mailed to generator by destination facility.

9. Emergency Telephone Number

Each manifest must bear the following statement with appropriate information:

''IN CASE OF EMERGENCY, OR THE DISCOVERY OF DAMAGE OR LEAKAGE, CALL 1–800–###–####.''

(4) The outer shipping container must bear a properly prepared merchandise return service label (*see* S923). The merchandise return service permit must be held in the same name as that of the authorization.

(5) The outer shipping container must be marked on two opposite side walls with the package orientation marking in 49 CFR 173.312 to identify the proper upright position of the mailpiece during handling.

(6) Mailpieces containing regulated medical waste or sharps waste must be marked on the address side with the correct UN number and proper shipping name (*e.g.*, ''Regulated Medical Waste, UN 3291'' or ''Regulated Medical Waste—Sharps, UN 3291'').

d. *Package Testing.* Testing must be performed on one sample of each type of kit to prove compliance with 8.7a. The sample mailing kit must withstand the tests in 49 CFR 178.604 (leakproof test), 178.606 (stacking test), 178.608 (vibration standard), and 178.609(e), (f), and (h) (test requirements for packaging for infectious substances). In addition, the absorbent material must withstand an absorbency test that satisfies the requirements in 8.7b(4). The test results must show that if every kit prepared for mailing were to be subject to the environmental and test conditions in 49 CFR, there would be no release of the contents to the environment and no significant reduction in the effectiveness of the packaging. Periodic retesting must be performed at least once every 24 months.

8.8 Packaging of Used Health Care Products

A used health care product known or suspected to contain a Risk Group 4 pathogen is nonmailable. A used health care product meeting the definition in 8.2i, classified in Risk Group 1, 2, or 3, and being returned to the manufacturer or manufacturer's designee is mailable as First-Class Mail or Priority Mail subject to the following packaging requirements:

a. Each used health care product must be drained of liquid to the extent possible and placed in a watertight primary receptacle designed and constructed to ensure that it remains intact under normal conditions of transport. For a used health care product capable of cutting or penetrating skin or packaging material, the primary receptacle must be capable of retaining the product without puncture of the packaging under normal conditions of transport. The primary receptacle must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2).

b. Each primary receptacle must be placed inside a watertight secondary container designed and constructed to ensure that it remains intact under normal conditions of transport. The secondary container must also be marked with the international biohazard symbol as shown in Exhibit 8.7c(2).

c. The secondary container must be placed inside an outer shipping container with sufficient cushioning material to prevent movement between the secondary container and the outer shipping container. An itemized list of the contents of the primary receptacle and information concerning possible contamination with a Division 6.2 material, including its possible location on the product, must be placed between the secondary container and the outer shipping container. A shipping paper and a content marking on the outer shipping container are not required.

8.9 Packaging of Forensic Material in Risk Groups 2 and 3

Forensic material in Risk Group 1 sent on behalf of a U.S. government, state, local, or Indian tribal government agency must be packaged under 8.10. Forensic material known or suspected to contain a Risk Group 4 infectious substance must be packaged under 8.5. Forensic material known or suspected to contain a Risk Group 2 or 3 pathogen is mailable as First-Class Mail or Priority Mail when packaged in a triple packaging, consisting of a primary receptacle, secondary container, and outer shipping container. The forensic material must be held within a securely sealed primary receptacle. The primary receptacle must be surrounded by sufficient absorbent material (for liquids) and cushioning material to protect the primary container from breakage. The absorbent material must be capable of taking up the entire liquid contents of the primary receptacle in case of leakage. The primary receptacle must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2). The primary receptacle and the absorbent and cushioning material must be enclosed in a watertight and securely sealed secondary container that is snugly packed within a strong and securely sealed outer shipping container. The secondary container must also display the international biohazard symbol as shown in Exhibit 8.7c(2). A shipping paper and a content

marking on the outer shipping container are not required.

8.10 Packaging for Risk Group 1 Materials

Division 6.2 materials in Risk Group 1 are not subject to regulation as hazardous materials (see 8.3), but when presented for mailing they must be properly packaged. Regulated medical waste, sharps waste, and used health care products classified in Risk Group 1 must be packaged and mailed under the applicable requirements in 8.7 or 8.8. All other Risk Group 1 materials are mailable as First-Class Mail, Priority Mail, or Package Services. Such materials must be held within a securely sealed primary receptacle. The primary receptacle must be surrounded by sufficient absorbent material (for liquids) and cushioning material to protect the primary receptacle from breakage. The absorbent material must be capable of taking up the entire liquid contents of the primary receptacle in case of leakage. The primary receptacle must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2). The primary receptacle and the absorbent and cushioning material must be snugly enclosed in a strong outer shipping container that is securely sealed. A shipping paper and a content marking on the outer shipping container are not required. Risk Group 1 diagnostic specimens and biological products are subject to the following packaging standards:

a. *Liquid Diagnostic (Clinical) Specimens and Biological Products.* A diagnostic (clinical) specimen in Risk Group 4 or a biological product in Risk Group 2, 3, or 4 must be packaged under 8.5. A diagnostic specimen in Risk Group 2 or 3 must be packaged under 8.6. The packaging of a diagnostic specimen (*e.g.*, a urine specimen or blood specimen used in drug-testing programs or insurance purposes) or a biological product (*e.g.*, polio vaccine) in Risk Group 1 is subject to the following standards:

(1) *Not Exceeding 50 ml.* A diagnostic specimen or biological product consisting of 50 ml or less per mailpiece must be packaged in a securely sealed primary receptacle. Two or more primary receptacles whose combined volume does not exceed 50 ml may be enclosed within a single mailpiece. The primary receptacle(s) must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2). Sufficient absorbent material and cushioning material to withstand shock and pressure changes must surround the primary receptacle(s), or be otherwise configured to take up the entire liquid contents in case of leakage. The primary receptacle(s) and the absorbent cushioning must be enclosed in a secondary container having a leakproof barrier that can prevent failure of the secondary container if the primary receptacle(s) leaks during shipment. The secondary container may serve as the outer shipping container. A shipping paper and a content marking on the outer shipping container are not required.

(2) *Exceeding 50 ml.* In addition to meeting the requirements in 8.10a(1), a clinical specimen or biological product that exceeds 50 ml per mailpiece also is subject to these requirements:

(a) A single primary receptacle must not contain more than 1,000 ml of specimen; two or more primary receptacles whose combined volume does not exceed 1,000 ml may be enclosed in a single secondary container.

(b) The secondary container cannot serve as the outer shipping container; the secondary container must be enclosed in a fiberboard box or container of equivalent strength that serves as the outer shipping container; the maximum amount of a specimen that may be enclosed in a single mailpiece must not exceed 4,000 ml.

b. *Dry Specimens.* A dry specimen, such as a blood spot or fecal smear in Risk Group 1 must be completely dried prior to enclosing it in a securely sealed primary receptacle. The primary receptacle must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2). Cushioning material to withstand shock and pressure changes is only required if the dry specimen is held within a breakable receptacle or on a glass slide. When required, the cushioning material must surround the primary receptacle to prevent breakage or damage to the primary receptacle. The primary receptacle (and cushioning material, if required) must be enclosed in a secondary container having a leakproof barrier that can prevent failure of the secondary container if the primary receptacle breaks during shipment. The secondary container may serve as the outer shipping container. A shipping paper and a content marking on the outer shipping container are not required.

9.0 RADIOACTIVE MATERIALS (HAZARD CLASS 7)

[*Change ''Publication 52,* Acceptance of Hazardous, Restricted, or Perishable Matter'' *to ''Publication 52,* Hazardous, Restricted, or Perishable Mail.'']

10.0 CORROSIVES (HAZARD CLASS 8)

* * * * *

10.2 Mailability

[*In item a, change ''secondary packagings'' to ''secondary container''; change ''secondary packaging'' to ''secondary container''; and change ''outer packaging'' to ''outer shipping container''.*]

[*In item b, change ''secondary packaging'' to ''secondary container'' and change ''outer packaging'' to ''outer shipping container''.*]

10.3 Marking

[*In the first sentence, change ''Surface Mail Only'' to ''Surface Only'' or ''Surface Mail Only.''*]

10.4 Nonspillable Wet Electric Storage Batteries

* * * * *

[*Revise item a to read as follows:*]

a. The nonspillable battery must be protected from short circuits, surrounded with sufficient cushioning material, and securely packaged in a strong fiberboard box that serves as the outer shipping container. [*In item b, change ''outer packaging'' to ''outer shipping container''.*]

* * * * *

[*In item d, change ''50 pounds'' to ''25 pounds.''*]

11.0 MISCELLANEOUS HAZARDOUS MATERIALS (HAZARD CLASS 9)

11.1 Definition

[*In the second sentence, delete ''magnetized materials,''.*]

* * * * *

11.3 Marking

[*In the first sentence, change ''Surface Mail Only'' to ''Surface Only'' or ''Surface Mail Only.''*]

11.4 Dry Ice

[*In item a, change the heading ''Air Transportation'' to ''Air Transportation Requirements.''*]

[*In item b, change the heading ''Surface Transportation'' to ''Surface Transportation Requirements''. Also change ''Surface Mail Only'' to ''Surface Only'' or ''Surface Mail Only.''*]

* * * * *

[*Renumber 11.5 as 12.0 and change the heading to read as follows:*]

12.0 OTHER REGULATED MATERIALS

12.1 Magnetized Materials

[*Change the first sentence in 12.1 to read as follows (the remainder of 12.1 is unchanged):*]

A magnetized material is not classified within any of the nine hazard classes. Such material is regulated as a hazardous material only if offered for carriage on air transportation and when it has a magnetic field strength capable of causing the deviation of aircraft instruments. Regulated magnetized materials are mailable subject to the following limitations:

a. Definition.

[*In the second sentence, change ''a hazard class 9 material'' to ''a hazardous material.''*]

b. Mailability.

[*In the third sentence, change ''Publication 52'' to ''Publication 52, Hazardous, Restricted, and Perishable Mail.''*]

* * * * *

C024 Other Restricted or Nonmailable Matter

* * * * *

[Renumber 18.0 and 19.0 as19.0 and 20.0, and insert new 18.0 to read as follows:]

18.0 ODD-SHAPED ITEMS IN PAPER ENVELOPES

Pens, pencils, key rings, bottle caps, and other similar odd-shaped items are not permitted in letter-size or flat-size paper envelopes unless they are wrapped within the other contents of the envelope to streamline the shape of the mailpiece and prevent damage during postal processing. If an odd-shaped item is not properly wrapped, it could burst through the envelope and cause injury to employees and damage to USPS processing equipment. Odd-shaped items that are properly wrapped within paper envelopes and are sent at the First-Class Mail or Standard Mail nonautomation rates may be subject to the nonmachinable surcharge under E130 or E620, as applicable. Properly wrapped odd-shaped items in automation rate letter-size mail are subject to the standards in C810. Flat-size automation rate mail is subject to the uniform thickness requirement in C820.

* * * * *

F Forwarding and Related Services

F000 Basic Services

F010 Basic Information

* * * * *

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

5.1 First-Class Mail and Priority Mail

* * * * *

[Revise item e to read as follows:]

e. First-Class Mail or Priority Mail bearing ''Change Service Requested'' must include the appropriate Address Change Service (ACS) participant code from an authorized ACS participant. ''Change Service Requested'' is not permitted for the following:

(1) Priority Mail, except for Priority Mail containing perishable matter under C022 (other than live animals).

(2) First-Class Mail or Priority Mail containing live animals under C022, hazardous materials under C023, or restricted matter underC024.

(3) First-Class Mail or Priority Mail with a special service other than Delivery Confirmation or Signature Confirmation.

Exhibit 5.1 Treatment of Undeliverable First-Class Mail and Priority Mail

[Revise the listing for ''Change Service Requested'' to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
	* * * * *
''Change service requested'' [2].	In all cases: Separate notice of new address or reason for nondelivery provided (in either case, address correction fee charged); piece disposed of by USPS. Restrictions: This endorsement may be used only by mailers authorized to participate in Address Change Service (ACS) and only for: (1) First-Class Mail (excluding live animals, hazardous materials, and restricted matter) bearing a proper ACS participant code. (2) Priority Mail containing perishable matter (other than live animals) and bearing a proper ACS participant code and the marking ''Perishable.'' Delivery Confirmation and Signature Confirmation are the only special services permitted with this endorsement. Prohibitions: This endorsement is not permitted for First-Class Mail or Priority Mail containing live animals, hazardous materials, or restricted matter.
	* * * * *

* * * * *

[Revise the text of footnote 2 to read as follows:]

2. Valid only for ACS participating pieces, other than pieces containing live animals, hazardous materials, or restricted matter.

* * * * *

5.3 Standard Mail

* * * * *

[Reletter items c through j as d though k, and insert new item c to read as follows:]

c. The endorsement ''Change Service Requested'' is not permitted for Standard Mail containing perishable matter under C022, hazardous materials under C023, or restricted matter under C024. Standard Mail containing perishable matter, hazardous materials, or restricted matter must bear the endorsement ''Address Service Requested,'' ''Forwarding Service Requested,'' or ''Return Service Requested.''

* * * * *

Exhibit 5.3a Treatment of Undeliverable Standard Mail

[*Revise the listing for ''Change Service Requested'' to read as follows:*]

Mailer endorsement	USPS Treatment of UAA Pieces
No endorsement [1].	In all cases: Piece0 disposed of by USPS. Prohibitions: Standard Mail containing perishable matter, hazardous materials, or restricted matter must bear a permissible endorsement.

Mailer endorsement	USPS Treatment of UAA Pieces
''Address Service Requested'' [2].	* * * * *
* * * * *	* * * * *
''Change Service Requested'' [3].	In all cases: Separate notice of new address or reason for nondelivery provided (in either case, address correction fee charged); piece disposed of by USPS. Restrictions: Delivery Confirmation is the only special service permitted with this endorsement. Prohibitions: This endorsement is not permitted for Standard Mail containing perishable matter, hazardous materials, or restricted matter.

[*Revise footnote 1 and add new footnotes 2 and 3 to read as follows:*]

1. Not valid for pieces containing perishable matter, hazardous materials, or restricted matter.

2. Valid for all pieces, including Address Change Service (ACS) participating pieces.

3. Not valid for pieces containing perishable matter, hazardous materials, or restricted matter. Valid for all other pieces, including Address Change Service (ACS) participating pieces.

* * * * *

5.4 Package Services

* * * * *

[*Reletter items c through e as d through f, and insert new item c to read as follows:*]

c. The endorsement ''Change Service Requested'' is not permitted for Package Services mail containing perishable matter under C022, hazardous materials under C023, or restricted matter under C024.

* * * * *

Exhibit 5.4 Treatment of Undeliverable Package Services Mail

[*Revise the listing for ''Change Service Requested'' to read as follows:*]

Mailer endorsement	USPS Treatment of UAA Pieces
* * * * *	* * * * *
''Change Service Requested'' [2].	In all cases: Separate notice of new address or reason for nondelivery provided (in either case, address correction fee charged); piece disposed of by USPS.
	Restrictions: Delivery Confirmation and Signature Confirmation are the only special services permitted with this endorsement. Prohibitions: This endorsement is not permitted for Package Services Mail containing perishable matter, hazardous materials, or restricted matter.

[*Add new footnote 2 to read as follows:*]

2. Not valid for pieces containing perishable matter, hazardous materials, or restricted matter. Valid for all other pieces, including Address Change Service (ACS) participating pieces.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–31990 Filed 12–18–02; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AL33

Privacy Act of 1974—Implementation

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Department of Veterans Affairs (VA) regulations governing the confidentiality and release of VA records subject to the Privacy Act, 5 U.S.C. 552a. We propose to revise regulation, which exempts certain records from the provisions of the Privacy Act authorized under 5 U.S.C. 552a (j)(2) and (k)(2). This revision would have the intended effect of permitting VA to exempt a new Privacy Act systems of records relating to police and security records.

DATES: Comments must be received on or before February 18, 2003.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AL33.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Director Police and Security Service (07B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, telephone (202) 273–5544.

SUPPLEMENTARY INFORMATION: Currently, VA regulations only exempt from certain provisions of the Privacy Act two VA Privacy Act systems of records (see, 38 CFR 1.582). This document proposes to add a new system of records, ''Police and Security Records—VA (103VA07B),'' to those already exempt under § 1.582.

Under title 5 United States Code (U.S.C.) 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act, if the agency or component that maintains the

system of records performs as its principal function activities pertaining to the enforcement of criminal laws. The function of the Office of Security and Law Enforcement's Police and Security Service is to provide for the maintenance of law and order and the protection of persons and property on VA property.

The system of records ''Police and Security Records—VA (103VA07B)'' was created in major part to support the criminal law related activities assigned to the Police and Security Service under the authority of 38 U.S.C. 901. These activities constitute the principal function of this staff. In addition to the principal functions pertaining to the enforcement of criminal laws, the Police and Security Service may receive and investigate complaints or information from various sources concerning the possible existence of activities constituting noncriminal violations of law, rules or regulations or substantial and specific danger to public safety.

Based upon the foregoing, VA would exempt this system of records to the extent that it encompasses information pertaining to criminal law related activities from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(j)(2):

5 U.S.C. 552a(c) (3) and (4)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1), (2) and (3)
5 U.S.C. 552a(e)(4)(G), (H) and (I)
5 U.S.C. 552a(e) (5) and (8)
5 U.S.C. 552a(f)
5 U.S.C. 552a(g)

Also, VA would exempt this system of records to the extent that it does not encompass information pertaining to criminal law related activities under 5 U.S.C. 552a(j)(2) from the following provisions of the Privacy Act of 1974 as permitted by 5 U.S.C. 552a(k)(2):

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4) (G), (H) and (I)
5 U.S.C. 552a(f)

In our opinion, the exemption of information and material in this system of records is necessary in order to accomplish the law enforcement functions of the Police and Security Service, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information and to avoid endangering these sources and Police and Security personnel.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule would apply only to individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this proposed rule.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: September 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be amended as follows:

PART I—GENERAL

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 1.582 is amended by adding paragraph (d) preceding the authority citation at the end of the section, to read as follows:

§ 1.582 Exemptions.

* * * * *

(d) *Exemption of Police and Security Records.* VA provides limited access to one Security and Law Enforcement System of Records, Police and Security Records—VA (103VA07B).

(1) The investigations records and reports contained in this System of Records are exempted [pursuant to 5 U.S.C. 552a(j)(2) of the Privacy Act of 1974] from Privacy Act subsections (c)(3) and (c)(4); (d); (e)(1) through (e)(3), (e)(4)(G) through (e)(4)(I), (e)(5), and (e)(8); (f); and (g); in addition, they are exempted [pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974] from Privacy Act subsections (c)(3); (d); (e)(1), (e)(4)(G) through (e)(4)(I); and (f).

(2) These records contained in the Police and Security Records—VA (103VA076B) are exempted for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects to the existence of the investigation and reveal that they are subjects of that investigation. Providing subjects with information concerning the nature of the investigation could result in alteration or destruction of evidence which is obtained from third parties, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(ii) The application of Privacy Act subsections (c)(4); (d); (e)(4)(G) and (e)(4)(H); (f); and (g) could interfere with investigative and enforcement proceedings, threaten the safety of individuals who have cooperated with authorities, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, reveal confidential information supplied by these sources, and disclose investigative techniques and procedures.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This could compromise the ability to conduct investigations and to identify, detect and apprehend violators. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources of these records in this system. However, for the reason stated in paragraph (d)(2)(ii) of this section, this exemption is still being cited in the event an individual wants

to know a specific source of information.

(iv) These records contained in the Police and Security Records—VA (103VA076B) are exempt from Privacy Act subsection (e)(1) because it is not possible to detect the relevance or necessity of specific information in the early stages of a criminal or other investigation. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established. In any investigation, the Office of Security and Law Enforcement may obtain information concerning violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Office of Security and Law Enforcement should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of civil or criminal law.

(v) The application of Privacy Act subsection (e)(2) would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

(A) In order to successfully verify a complaint, most information about a complainant or an individual under investigation must be obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his/her activities because of the subject's rights against self-incrimination and because of the inherent unreliability of the suspect's statements. Similarly, it is not always feasible to rely upon the complainant as a source of information regarding his/her involvement in an investigation.

(B) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(vi) The reasons for exempting these records in the Police and Security Records—VA (103VA07B) from Privacy Act subsection (e)(3) are as follows:

(A) The disclosure to the subject of the purposes of the investigation would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(B) Informing the complainant or the subject of the information required by this provision could seriously interfere with undercover activities, jeopardize the identities of undercover agents and impair their safety, and impair the successful conclusion of the investigation.

(C) Individuals may be contacted during preliminary information gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(vii) Since the Privacy Act defines ''maintain'' to include the collection of information, complying with subsection (e)(5) would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation, it is not always possible to make this determination prior to collecting the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material that may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(viii) The notice requirement of Privacy Act subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

* * * * *

[FR Doc. 02–31708 Filed 12–18–02; 8:45 am]

BILLING CODE 8320–01–U

Notices

Federal Register

Vol. 67, No. 244

Thursday, December 19, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Determination of the 2002 Fiscal Year Interest Rates on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 2002 fiscal year interest rates determination.

SUMMARY: In accordance with 7 CFR 1610.10, the Rural Telephone Bank (Bank) fiscal year 2002 cost of money rates have been established as follows: 6.51% and 6.05% for advances from the liquidating account and financing account, respectively (fiscal year is the period beginning October 1 and ending September 30).

Except for loans approved from October 1, 1987, through December 21, 1987, where borrowers elected to remain at interest rates set at loan approval, all loan advances made during fiscal year 2002 under Bank loans approved in fiscal years 1988 through 1991 shall bear interest at the rate of 6.51% (the liquidating account rate). All loan advances made during fiscal year 2002 under Bank loans approved during or after fiscal year 1992 shall bear interest at the rate of 6.05% (the financing account rate).

The calculation of the Bank's cost of money rates for fiscal year 2002 for the liquidating account and the financing account are provided in Tables 1 and 2. Since the calculated rates are greater than the minimum rate (5.00%) allowed under 7 U.S.C. 948(b)(3)(A), the cost of money rates for the liquidating account and financing account are set at 6.51% and 6.05%, respectively. The methodology required to calculate the cost of money rates is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, South Building, Washington, DC 20250, telephone number (202) 720–9556.

SUPPLEMENTARY INFORMATION: The Federal Credit Reform Act of 1990 (''Credit Reform'') (2 U.S.C. 661a, *et seq.*) implemented a system to reform the budgetary accounting and management of Federal credit programs. Bank loans approved on or after October 1, 1991, are accounted for in a different manner than Bank loans approved prior to fiscal year 1992. As a result, the Bank must calculate two cost of money rates: (1) The cost of money rate for advances made from the liquidating account (advances made during fiscal year 2002 on loans approved prior to fiscal year 1992) and (2) the cost of money rate for advances made during fiscal year 2002 on loans approved on or after October 1, 1991 (otherwise referred to as loans from the financing account).

The cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuance of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources.

During fiscal year 2002, the Bank was authorized to pay the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act (RE Act); no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 4.20%.

Sources and Costs of Funds—Liquidating Account

In accordance with section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 2002. Advances for the purchase of Class B stock and cash purchases for Class B stock were $88,786. There were rescissions of loan funds advanced for Class B stock in the amount of $189,102, therefore, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was ($100,316). The amount received by the Bank in fiscal year 2002 from the issuance of Class C stock was $9,759.

The Bank did not issue debentures or any other obligations related to the liquidating account in fiscal year 2002. Consequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of fiscal year 2002 loan advances from the liquidating account over amounts received from issuance of stocks, debentures, and other obligations amounted to $1,955,057. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the liquidating account is also provided in Table 1. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost for money rates for fiscal years 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Public Law 100–203, and are listed in 7 CFR 1610.10(c) and Table 1 herein.

Sources and Costs of Funds—Financing Account

In accordance with section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 2002. Advances for the purchase of Class B stock and cash purchases for Class B stock were $2,868,237. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $2,868,237. The Bank did not receive any amounts in fiscal year 2002 from the issuance of Class C stock.

During fiscal year 2002, issuance of debentures or any other obligations related to the financing account were $61,400,000 at an interest rate of 6.352%. This was in excess of total fiscal year 2002 advances; the remaining funds will be carried forward and used for loan transactions in FY2002.

Since there was no excess of fiscal year 2002 loan advances from the financing account over amounts received from issuance of stocks, debentures, and other obligations, no cost was incurred related to advances from the financing account. However, the Bank's cost of money rate for advances from the financing account is provided in Table 2. The methodology required to perform this calculation is described in 7 CFR 1610.10(c).

Dated: November 22, 2002.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

TABLE 1.—RURAL TELEPHONE BANK COST OF MONEY RATE—LIQUIDATING ACCOUNT

FY 2002 Source of Bank Funds	(a) Amount	(b) Cost (percent)	(c) (a) × (b)	(c)/Advances (percent)
Issuance of Class A Stock	$	2.00	$	0.0000
Issuance of Class B Stock	(100,316)	0.00	.....	0.0000
Issuance of Class C Stock	9,759	4.20	410	0.0220
Issuance of Debentures and Other Obligations	.....	0.00	.....	0.0000
Excess of Total Advances Over Issuances	1,955,057	6.19	121,018	6.4906
Total FY 2002 Advances	1,864,500	Calculated Cost of Money Rate =		6.51
		Minimum Rate Allowable =		5.00

Fiscal year	(a) Cost of money	(b) Advances	(c) (a) × (b)	(c)/Total Advances (percent)
FY 1974	5.01	$111,022,574	$5,562,231	0.232
FY 1975	5.85	130,663,197	7,643,797	0.318
FY 1976	5.33	99,915,066	5,325,473	0.222
FY 1977	5.00	80,907,425	4,045,371	0.168
FY 1978	5.87	142,297,190	8,352,845	0.348
FY 1979	5.93	130,540,067	7,741,026	0.322
FY 1980	8.10	199,944,235	16,195,483	0.674
FY 1981	9.46	148,599,372	14,057,501	0.585
FY 1982	8.39	112,232,127	9,416,275	0.392
FY 1983	6.99	93,402,836	6,528,858	0.272
FY 1984	6.55	90,450,549	5,924,511	0.247
FY 1985	5.00	72,583,394	3,629,170	0.151
FY 1986	5.00	71,582,383	3,579,119	0.149
FY 1987	5.00	51,974,938	2,598,747	0.108
FY 1988	5.00	119,488,367	5,974,418	0.249
FY 1989	5.00	97,046,947	4,852,347	0.202
FY 1990	5.00	107,694,991	5,384,750	0.224
FY 1991	5.43	163,143,075	8,858,669	0.369
FY 1992	6.14	84,940,822	5,215,366	0.217
FY 1993	6.05	84,605,366	5,118,625	0.213
FY 1994	6.15	54,530,897	3,353,650	0.140
FY 1995	6.04	35,967,133	2,172,415	0.090
FY 1996	6.05	30,965,187	1,873,394	0.078
FY 1997	5.98	32,602,587	1,949,635	0.081
FY 1998	5.96	20,673,798	1,232,158	0.051
FY 1999	6.01	17,796,518	1,069,571	0.045
FY 2000	6.01	10,436,622	627,241	0.026
FY 2001	5.95	6,638,107	394,967	0.016
Total Advances	.....	2,402,645,770	Cost of Money	6.19

TABLE 2.—RURAL TELEPHONE BANK COST OF MONEY RATE—FINANCING ACCOUNT

FY 2002 source of bank funds	(a) Amount	(b) Cost (percent)	(c) (a) × (b)	(c)/Advances (percent)
Issuance of Class A Stock	$	2.000	$	0.0000
Issuance of Class B Stock	2,868,237	0.000	.....	0.0000
Issuance of Class C Stock	.....	4.200	.....	0.0000
Issuance of Debentures and Other Obligations*	57,364,682	6.352	3,643,805	6.0495
Excess of Total Advances Over Issuances	.....	6.100	.....	0.0000
Total FY 2002 Advances	60,232,919	Calculated Cost of Money Rate =		6.05
		Minimum Rate Allowable =		5.00

*RTB borrowed $61,400,000 from the financing account in FY2002, the remaining funds will be used for loan transactions in FY2002.

RURAL TELEPHONE BANK HISTORICAL COST OF MONEY RATE—FINANCING ACCOUNT

Fiscal year	(a) Cost of money (percent)	(b) Advances	(c) (a) × (b)	(c)/Total advances (percent)
FY 1992	7.38	4,056,250	299,351	0.083

RURAL TELEPHONE BANK HISTORICAL COST OF MONEY RATE—FINANCING ACCOUNT—Continued

Fiscal year	(a) Cost of money (percent)	(b) Advances	(c) (a) × (b)	(c)/Total advances (percent)
FY 1993	6.35	23,839,200	1,513,789	0.420
FY 1994	6.40	56,838,902	3,637,690	1.008
FY 1995	6.88	37,161,517	2,556,712	0.709
FY 1996	6.42	44,536,621	2,859,251	0.793
FY 1997	6.54	34,368,726	2,247,715	0.623
FY 1998	5.71	34,446,458	1,966,893	0.545
FY 1999	5.54	38,685,732	2,143,190	0.594
FY 2000	6.05	31,401,867	1,899,813	0.527
FY 2001	5.17	55,405,896	2,864,485	0.794
Total Advances		360,741,169	Cost of Money	6.10

[FR Doc. 02–31942 Filed 12–18–02; 8:45 am]
BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Awards Under the RUS Distance Learning and Telemedicine Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of applications selected to receive grant awards.

SUMMARY: The Rural Utilities Service (RUS) hereby announces the recipients that were selected to receive grant awards during fiscal year (FY) 2002 under the Distance Learning and Telemedicine Grant Program.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Chief, Distance Learning and Telemedicine Branch, U.S. Department of Agriculture, Rural Utilities Service, STOP 1550, Room 2845, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–1701. Telephone: (202) 720–0413. FAX: (202) 720–1051.

SUPPLEMENTARY INFORMATION: Pursuant to 7 CFR 1703.101, RUS is hereby publishing the names of the 71 organizations that have been awarded $27,139,772 in grants under 7 CFR part 1703, subpart D, Distance Learning and Telemedicine Grant Program. The recipients are as follows:

USDA, RURAL UTILITIES SERVICE, TELECOMMUNICATIONS PROGRAM FY 2002 DISTANCE LEARNING AND TELEMEDICINE GRANT AWARDS

State	Grantee	Amount
AK	Alaska Native Tribal Health Consortium	$500,000
AK	The Health TV Channel, Inc.	500,000
AL	Choctaw County Board of Education	233,262
AL	Conecuh County School District	500,000
AR	Barton-Lexa School District	500,000
AZ	Arizona Western College	391,455
CA	Southern Cal. Tribal Chairmen's Assn. Inc.	479,235
CA	Yosemite Community College District	500,000
CO	Grand River Hospital District	500,000
FL	All Children's Hospital	481,410
GA	South Georgia Governmental Services Authority	499,100
ID	North Idaho Rural Health Consortium	500,000
KS	Hays Medical Center, Inc.	195,000
KS	Barton County Community College	69,550
KY	Saint Joseph Healthcare	90,300
LA	Primary Care Providers for a Healthy Feliciana	67,360
ME	The Aroostook Medical Center	162,543
ME	Visiting Nurse Service of Southern Maine and Seacoast New Hampshire	214,956
ME	St. Joseph Healthcare Inc.	494,750
ME	HealthReach Network d/b/a HealthReach Homecare & Hospice	500,000
MI	Borgess Health Alliance, Inc.	368,183
MN	First Care Medical Service	200,000
MN	Mille Lacs Health System	207,720
MO	Education Plus Network	464,492
MS	Mississippi Blood Services	193,930
MS	Jones County School District	500,000
MS	Brookhaven School District	500,000
MT	Deaconess Billings Clinic Foundation	209,300
MT	Montana State University-Northern	398,785
MT	Eastern Montana Education Telecommunications	430,071
NE	Rural Health Partners, Inc. d.b.a. Heartland Health Alliance	164,640
NE	North Platte Nebraska Hospital Corporation d.b.a Great Plains Regional Medical Center	484,000
NM	University of New Mexico-Gallup	432,526
NY	NYS Office of Children & Family Services	190,279
NY	New York State Office of Children and Family Services	335,000

USDA, RURAL UTILITIES SERVICE, TELECOMMUNICATIONS PROGRAM FY 2002 DISTANCE LEARNING AND TELEMEDICINE GRANT AWARDS—Continued

State	Grantee	Amount
NY	Schuyler-Chemung-Tioga Board of Cooperative Educational Services	400,998
NY	Copenhagen CSD (Lead Agency)	476,650
NY	Moses-Ludington Hospital	499,800
OH	Martins Ferry City School District (BUCKEYE Project)	213,530
OH	Ohio University Southern Campus	482,518
OK	Canadian Valley Technology Center	309,778
OK	Western Oklahoma State College	415,696
OK	Lane School	497,000
OK	Wapanucka Public School	498,000
OK	Howe Public Schools District I–67	486,928
OR	Rogue Community College	286,486
OR	Samaritan North Lincoln Hospital	317,687
PA	Greene County Industrial Development Authority	456,647
PA	Brownsville Area School District	500,000
PA	Wayne Memorial Hospital, Inc.	500,000
PA	Home Health Services Foundation	500,000
TN	Claiborne County Department of Education	427,972
TN	The University of Tennessee Health Science Center	460,990
TN	The University of Tennessee College of Pharmacy	490,012
TN	Sequatchie County School District	500,000
TX	Palo Alto College	257,760
TX	San Antonio College	312,315
TX	Taft Independent School District	450,595
TX	Texas A&M International University	497,000
TX	Cypress Valley Alliance	500,000
TX	Odem-Edroy ISD	500,000
TX	Education Service Center, Region 2	499,473
UT	Central Utah Educational Services	322,322
VA	Southside Virginia Community College	171,578
VA	Crossroads Rural Entrepreneurial Institute, Inc.	470,700
VA	University of Virginia	73,000
VT	Visiting Nurse Alliance of VT and NH, Inc.	400,000
WA	Wellpinit School District	475,000
WA	Educational Service District 105	470,600
WI	Space Explorers Education Initiatives, Inc.	350,000
WV	Glenville State College	210,890

(Continuation of Announcement of Grant Awards Under the RUS DLT Grant Program).

Dated: December 13, 2002.

Curtis M. Anderson,

Deputy Administrator, Acting for the Administrator, Rural Utilities Service.

[FR Doc. 02–31941 Filed 12–18–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

[Docket No. 021211304–2304–01]

Office of the Secretary; Posting of Alternative Fuel Vehicle Reports on the Department of Commerce Web Site

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce's (DoC) alternative fuel vehicle (AFV) reports for FY 1999, FY 2000, and FY 2001 are posted on the Internet at *http://www.osec.doc.gov/oas/fleet.htm*. The purpose of this notice is to provide information on DoC's compliance with the Energy Policy Act of 1992 (EPACT) (Pub. L. 102–486), which requires that AFV reports for FY 1999 and beyond be made public including placing them on a publicly available Web site and publishing the availability of the reports, including the Web site address, in the **Federal Register**.

DATES: Pursuant to court order, this notice will be published in the **Federal Register** prior to January 31, 2003, and posted on the DoC Web site prior to January 31, 2003.

ADDRESSES: Interested persons without internet access can obtain copies of the AFV reports from Mauryce Johnson at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mauryce Johnson, (202) 482–8246.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992 (EPACT) (Pub. L. 102–486) requires that seventy-five percent of all covered light-duty vehicles acquired for Federal fleets in FY 1999 and beyond be AFVs.

Earthjustice, on behalf of the Center for Biological Diversity, the Bluewater Network, and the Sierra Club, brought suit against eighteen Federal agencies, including DoC, in the United States District Court for the Northern District of California, alleging noncompliance with EPACT's provisions regarding Federal fleets. On July 26, 2002, the court ordered that the named Federal agencies prepare and submit overdue reports to Congress outlining their AFV and acquisitions for FY 1999, FY 2000, and FY 2001.

Pursuant to court order, each of the eighteen Federal agencies must individually publish the availability of their reports in the **Federal Register** no later than January 31, 2003. Additionally, the agencies must post their reports on their Web sites, again no later than January 31, 2003.

Doc's AFV reports for FY 1999, FY 2000, and FY 2001, are currently available at *http://www.osec.doc.gov/oas/fleet.htm.*

Authority: Pub. L. 102–486, Title III, Sec. 310, Oct. 24, 1992, 106 Stat. 2874.

Denise L. Wells,

Acting Director for Administrative Services.

[FR Doc. 02–31924 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members to Serve on the Census Advisory Committee on the African American Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 United States Code (U.S.C.) Appendix 2, section 10(a)(b)), the Bureau of the Census (Census Bureau) requests nominations of individuals to the Census Advisory Committee on the African American Population. Three seats on this Committee currently are vacant. The Census Bureau will consider nominations received in response to this Request for Nominations, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides Committee and membership criteria.

DATES: Please submit nominations by January 21, 2003.

ADDRESSES: Please submit nominations to Ms. Jeri Green, Chief, Census Advisory Committees and Special Populations Office, U.S. Census Bureau, Department of Commerce, Room 3627, Federal Building 3, Washington, DC 20233, or by fax to (301) 457–8608.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Chief, Census Advisory Committees and Special Populations Office, at the above address or by telephone on (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (title 5, U.S.C., Appendix 2) in 1995. The following provides information about the Committee, membership, and nomination process:

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between African American communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the African American population and on ways data can be disseminated for maximum usefulness to the African American population.

2. The Committee draws upon its experience with Census 2000 procedures, results of decennial evaluations, research studies, test censuses, and other experiences to provide advice and recommendations on Census 2010 planning, the American Community Survey, and related decennial programs.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of 3 years. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, expertise, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including State, local governments, academia, media, research, community-based organizations, and the private sector. No employee of the Federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Census Director or designated Federal official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their African American communities. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the African American population and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations. A summary of the candidate's qualifications (résumé or curriculum vitae) must be included in the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: December 16, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–31934 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the American Indian and Alaska Native Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 United States Code (U.S.C.) Appendix 2, section 10(a)(b)), the Bureau of the Census (Census Bureau) requests nominations of individuals to the Census Advisory Committee on the American Indian and Alaska Native Populations. Three seats on this Committee currently are vacant. The Census Bureau will consider nominations received in response to this Request for Nominations, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides Committee and membership criteria.

DATES: Please submit nominations by January 21, 2003.

ADDRESSES: Please submit nominations to Ms. Jeri Green, Chief, Census Advisory Committees and Special Populations Office, U.S. Census Bureau, Department of Commerce, Room 3627, Federal Building 3, Washington, DC 20233, or by fax to (301) 457–8608.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Chief, Census Advisory Committee and Special Populations Office, at the above address or by telephone on (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (title 5, U.S.C., Appendix 2) in 1995. The following provides information about the Committee, membership, and nomination process:

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between American Indian and Alaska Native communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for American Indian and Alaska Native populations and on ways data can be disseminated for maximum usefulness to American Indian and Alaska Native populations.

2. The Committee draws upon its experience with Census 2000 procedures, results of decennial evaluations, research studies, test censuses, and other experiences to provide advice and recommendations on Census 2010 planning, the American Community Survey and related decennial programs.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member committee for a period of 3 years. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, tribal diversity, expertise, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including State, local and tribal governments, academia, media, research, community-based organizations, and the private sector. No employee of the Federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained committee membership.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Census Director or designated federal official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their American Indian and Alaska Native communities. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate American Indian and Alaska Native populations and obtain complete and accurate data on these populations. Individuals, groups, or organizations may submit nominations. A summary of the candidate's qualifications (resumé or curriculum vitae) must be included in the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: December 16, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–31935 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Asian Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 United States Code (U.S.C.) Appendix 2, Section 10(a)(b)), the Bureau of the Census (Census Bureau) requests nominations of individuals to the Census Advisory Committee on the Asian Populations. Three seats on this Committee currently are vacant. The Census Bureau will consider nominations received in response to this Request for Nominations, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides Committee and membership criteria.

DATES: Please submit nominations January 21, 2003.

ADDRESSES: Please submit nominations to Ms. Jeri Green, Chief, Census Advisory Committees and Special Populations Office, Bureau of the Census, Department of Commerce, Room 3627, Federal Building 3, Washington, DC 20233, or by fax to (301) 457–8608.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Chief, Census Advisory Committee and Special Populations Office, at the above address or by telephone on (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) in 1995. The following provides information about the Committee, membership, and nomination process:

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Asian communities and the Census Bureau.

Committee members identify useful strategies to reduce the differential undercount for Asian populations, and on ways data can be disseminated for maximum usefulness to Asian populations.

2. The Committee draws upon its experience with Census 2000 procedures, results of decennial evaluations, research studies, test censuses, and other experiences to provide advice and recommendations on Census 2010 planning, the American Community Survey, and related decennial programs.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Committee members are selected in accordance with applicable

Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, ethnicity, expertise, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including State, local governments, academia, media, research, community-based organizations, and the private sector. No employee of the Federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Census Director or designated federal official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their Asian communities. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate Asian populations and obtain complete and accurate data on these populations. Individuals, groups or organizations may submit nominations. A summary of the candidate's qualifications (resumé or curriculum vitae) must be included in the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: December 16, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–31936 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Hispanic Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 United States Code (U.S.C.) Appendix 2, section 10(a)(b)), the Bureau of the Census (Census Bureau) requests nominations of individuals to the Census Advisory Committee on the Hispanic Population. Four seats on this Committee currently are vacant. The Census Bureau will consider nominations received in response to this Request for Nominations, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides Committee and membership criteria.

DATES: Please submit nominations by January 21, 2003.

ADDRESSES: Please submit nominations to Ms. Jeri Green, Chief, Census Advisory Committees and Special Populations Office, Bureau of the Census, Department of Commerce, Room 3627, Federal Building 3, Washington, DC 20233, or by fax to (301) 457–8608.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Chief, Census Advisory Committee and Special Populations Office, at the above address or by telephone on (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (title 5, United States Code (U.S.C.), Appendix 2) in 1995. The following provides information about the Committee, membership, and nomination process:

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Hispanic communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the Hispanic population and on ways data can be disseminated for maximum usefulness to the Hispanic population.

2. The Committee draws upon its experience with Census 2000 procedures, results of decennial evaluations, research studies, test censuses, and other experiences to provide advice and recommendations on Census 2010 planning, the American Community Survey, and related decennial programs.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, ethnicity, expertise, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including State, local governments, academia, media, research, community-based organizations, and the private sector. No employee of the Federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained committee membership.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Census Director or designated Federal official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their Hispanic communities. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the Hispanic population and obtain complete and accurate data on this population. Individuals, groups or organizations may submit nominations. A summary of the candidate's qualifications (resumé or curriculum vitae) must be included in the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides

Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: December 16, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–31937 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Native Hawaiian and Other Pacific Islander Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 United States Code (U.S.C.) Appendix 2, section 10(a)(b)), the Bureau of the Census (Census Bureau) requests nominations of individuals to the Census Advisory Committee on the Native Hawaiian and Other Pacific Islander Populations. One seat on this Committee currently is vacant. The Census Bureau will consider nominations received in response to this Request for Nominations, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides Committee and membership criteria.

DATES: Please submit nominations by January 21, 2003.

ADDRESSES: Please submit nominations to Ms. Jeri Green, Chief, Census Advisory Committees and Special Populations Office, Bureau of the Census, Department of Commerce, Room 3627, Federal Building 3, Washington, DC 20233, or by fax to (301) 457–8608.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Chief, Census Advisory Committee and Special Populations Office, at the above address or by telephone on (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (title 5, U.S.C., Appendix 2) in 1995. The following provides information about the Committee, membership, and nomination process:

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Native Hawaiian and Other Pacific Islander communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the population, and on ways data can be disseminated for maximum usefulness to the Native Hawaiian and Other Pacific Islander Populations.

2. The Committee draws upon its experience with Census 2000 procedures, results of decennial evaluations, research studies, test censuses, and other experiences to provide advice and recommendations on Census 2010 planning, the American Community Survey, and related decennial programs.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, ethnicity, expertise, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including State, local governments, academia, media, research, community-based organizations, and the private sector. No employee of the Federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement or Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Census Director or designated Federal official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of Native Hawaiian and Other Pacific Islander communities. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the Native Hawaiian and Other Pacific Islander Population and obtain complete and accurate data on this population. Individuals, groups or organizations may submit nominations. A summary of the candidate's qualifications (resumé or curriculum vitae) must be included in the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: December 16, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–31938 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 12, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom (67 FR 52447). This review covers one manufacturer/exporter of the subject merchandise (Imperial Chemical Industries, PLC). The period of review (POR) is July 1, 2000, through June 30, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for

the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Michele Mire, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5193 or (202) 482–4711, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2001).

Background

On August 12, 2002, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on INC from the United Kingdom. *See Industrial Nitrocellulose from the United Kingdom: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 52447 (August 12, 2002).

In response to the Department's invitation to comment on the preliminary results of this review, Imperial Chemical Industries, PLC (ICI or respondent) filed its case brief on November 13, 2002. Green Tree Chemical Technologies, Inc. (Green Tree or petitioner) filed its rebuttal brief on November 18, 2002.

Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item number 3912.20.0000. While the HTS classification number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final results. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

The issue raised in the case and rebuttal briefs submitted by parties to this administrative review is addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*) from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated December 10, 2002, which is hereby adopted by this notice. This issue is identified in the attached appendix to this notice. Parties can find a complete discussion of the issue raised in this review and the corresponding recommendation in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculation. These changes are discussed in the relevant sections of the *Decision Memorandum.*

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Weighted-average percent margin
Imperial Chemical Industries, PLC	3.06 percent.

Assessment

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values of the subject merchandise on each of the importer's entries during the review period.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice of final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent final results for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.13 percent, the ''all-others'' rate established in the LTFV investigation (55 FR 21055, May 22, 1990).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of administrative review for a subsequent review period.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties

prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 10, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issue in *Decision Memorandum*

1. Whether the Department Should Calculate the Net Interest Expense Ratio Based on the Fiscal Year Financial Statements of the Subsidiary, Nobel's Explosives Company, Ltd. (NEC), rather than the Fiscal Year Consolidated Financial Statements of the Parent, Imperial Chemical Industries, PLC (ICI).

[FR Doc. 02–31975 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–047. *Applicant:* National Institutes of Health, NIAMS/LSBR, 50 South Drive, Building 50, Room 1517, Bethesda, MD 20892–8025. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to study retroviruses such as HIV (human immunodeficiency virus—the AIDS pathogen) and herpesviruses, such as herpes simplex type 1. By comparing tomograms of different individual particles, their variability in populations and their conserved features will be systemically characterized. Also, the instrument will be used to characterize the infection process whereby these viruses recognize, attach to, and enter susceptible cells. The viruses will be allowed to infect cultured cells, which will then be embedded, sectioned and visualized by tomography. *Application accepted by Commissioner of Customs:* November 19, 2002.

Docket Number: 02–048. *Applicant:* National Institutes of Health, National Institute of Mental Health, Division of Intramural Research, Molecular Imaging Branch, PET Radiopharmaceutical Sciences Section, 10 Center Drive, Building 10, Room B3C346A, Bethesda, MD 20892–0135. *Instrument:* (2) each Multi-Tasking Radiosynthesis Devices with Accessories. *Manufacturer:* Synthia Lab System Sweden AB, Sweden. *Intended Use:* The instruments are intended to be used in a radiochemistry laboratory for the synthesis of radiolabeled drugs, which will be evaluated as probes of the chemistry of the living human and nonhuman primate brain. The synthesis involves use of high levels of radioactivity (up to 1,000 mCi), with gamma emission of high energy and high penetration. The instruments will operate the chemical synthesis devices without direct human contact and will, therefore, decrease radiation exposure to the workers. *Application accepted by Commissioner of Customs:* November 22, 2002.

Docket Number: 02–049. *Applicant:* Howard Hughes Medical Institute, Center for Neural Science, New York University, 4 Washington Place, Room 809, New York, NY 10003. *Instrument:* Multisync Clinton Monoray monitor and FE–1 Goggles. *Manufacturer:* Cambridge Research Systems Ltd., United Kingdom. *Intended Use:* The instruments are intended to be used to study stereoscopic vision in non-human primates. Behavioral measurements will be made of the animals' ability to achieve stereoscopic depth perception. The animals will be trained to indicate stimulus quality based on their binocular visual status. The studies are designed to define the degree of binocular function that is required for stereoscopic vision. The information will be important in future management of visual disorders in humans. *Application accepted by Commissioner of Customs:* November 26, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–31974 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Ohio State University, et al. Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–041. *Applicant:* Ohio State University, Columbus, OH 43210. *Instrument:* Electron Microscope, Model Tecnai F20 S–TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 64096, October 17, 2002. *Order Date:* March 16, 2001.

Docket Number: 02–044. *Applicant:* Dartmouth College, Hanover, NH 03755. *Instrument:* Electron Microscope, Model JEM–1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 67 FR 70406, November 22, 2002. *Order Date:* June 25, 2002.

Docket Number: 02–045. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 64097, October 17, 2002. *Order Date:* December 27, 2001.

Docket Number: 02–046. *Applicant:* Brandeis University. *Instrument:* Electron Microscope, Model Tecnai F30 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See

notice at 67 FR 70406, November 22, 2002. *Order Date:* July 31, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–31973 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics for Calendar Year 2003

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of allocation of 2003 worsted wool fabric tariff rate quota.

SUMMARY: The Department of Commerce (Department) has determined the allocation for calendar year 2003 of imports of certain worsted wool fabrics under tariff rate quotas established by Title V of the Trade and Development Act of 2000 as amended by the Trade Act of 2002. The companies that are being provided an allocation are listed below.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade and Development Act of 2000 (The Act) as amended by the Trade Act of 2002 creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty is limited to 4,500,000 square meters per year. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12), the reduction is limited to 3,500,000 square meters per year. The Act requires the President to ensure that such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Presidential Proclamation 7383, of December 1, 2000, authorized the Secretary of Commerce to allocate the quantity of worsted wool fabric imports under the tariff rate quotas. On January 22, 2001 the Department published regulations establishing procedures for applying for, and determining, such allocations. 66 FR 6459, 15 CFR 335.

On August 28, 2002, the Department published a notice soliciting applications for an allocation of the 2003 tariff rate quotas with a closing date of September 27, 2002. The Department received timely applications for the HTS 9902.51.11 tariff rate quota from 15 firms. The Department received timely applications for the HTS 9902.51.12 tariff rate quota from 14 firms. All applicants were determined eligible for an allocation.

Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

Firms That Received Allocations

1. HTS 9902.51.11, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER GREATER THAN 18.5 MICRON, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING SUITS, SUIT-TYPE JACKETS, OR TROUSERS (PROVIDED FOR IN SUBHEADING 5112.11.60 AND 5112.19.95)

   Amount allocated: 4,500,000 square meters.

Companies Receiving Allocation:

American Fashion, Inc.--Chula Vista, CA
Bowdon Manufacturing Co., Inc--Bowdon, GA
Calvin Clothing Company, Inc.--Scranton, PA
Corbin Ltd.--Ashland, KY
Hartmarx Corporation--Chicago, IL
Hartz & Company, Inc.--Frederick, MD
Hugo Boss Cleveland, Inc--Cleveland, TN
JA Apparel Corp.--New York, NY
John H. Daniel Co.--Knoxville, TN
Majer Brands Company, Inc.-Hanover, PA
Saint Laurie Ltd--New York, NY
Sewell Clothing Company, Inc.--Bremen, GA
Southwick Clothing L.L.C.--Lawrence, MA
Toluca Garment Company-Toluca, IL
The Tom James Co.--Franklin, TN

2. HTS 9902.51.12, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER OF 18.5 MICRON OR LESS, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING SUITS, SUIT-TYPE JACKETS, OR TROUSERS (PROVIDED FOR IN SUBHEADING 5112.11.30 AND 5112.19.60)

   Amount allocated: 3,500,000 square meters.

Companies Receiving Allocation:

American Fashion, Inc.--Chula Vista, CA
Brooks Brothers--New York, NY
Hartmarx Corporation--Chicago, IL
Hartz & Company, Inc.--Frederick, MD
Hugo Boss Cleveland, Inc.--Cleveland, TN
JA Apparel Corp.--New York, NY
John H. Daniel Co.--Knoxville, TN
Majer Brands Company, Inc.-Hanover, PA
Martin Greenfield--Brooklyn, NY
Saint Laurie Ltd--New York, NY
Sewell Clothing Company, Inc.--Bremen, GA
Southwick Clothing L.L.C.--Lawrence, MA
Toluca Garment Compan-Toluca, IL
The Tom James Co.--Franklin, TN

Dated: December 13, 2002.

James C. Leonard III,

Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Department of Commerce.

[FR Doc.02–31939 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111202A]

Taking and Importing Marine Mammals; Taking Marine MammalsIncidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a letter of authorization (LOA) to take a small number of marine mammals incidental to the production of offshore oil and gas at the Northstar development in the Beaufort Sea off Alaska has been issued to BP Exploration (Alaska), Anchorage, AK (BPXA).

DATES: This LOA is effective from December 9, 2002, until December 9, 2003.

ADDRESSES: A copy of BPXA's letter and/or the LOA may be obtained by writing to the Office of Protected

Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055, ext. 128, or Bradley Smith (907) 271–5006.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, will not have an unmitigable adverse impact on the availability of the species or stock(s) of marine mammals for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to construction and operation of the offshore oil and gas facility at Northstar in the Beaufort Sea were published and made effective on May 25, 2000 (65 FR 34014), and remain in effect until May 25, 2005.

Summary of Request

On September 25, 2002, NMFS received a request from BPXA for a renewal of an LOA issued on September 28, 2000 (65 FR 58265) and reissued on December 14, 2001 (66 FR 65923, December 21, 2001), for the taking of marine mammals incidental to oil production operations at Northstar, under section 101(a)(5)(A) of the MMPA. This request contained information in compliance with 50 CFR 216.209, which updated information provided in BPXA's original application for takings incidental to construction and operations at Northstar. The current LOA for the taking of marine mammals incidental to oil production at the Northstar facility will expire on November 30, 2002.

Impacts on marine mammals may occur through noise from barge, helicopter traffic, drilling, and other noise sources on the platform. Impacts may also result if there is an oil spill resulting from production. While noise impacts on marine mammals will be low (this structure will make less noise than standard jack-up rigs, the concrete island drilling structure, or seismic activity), bowhead whales will likely hear the noise at distances up to 10 km (6.2 mi) from the island. In addition, there may be some harassment, injury, or mortality of ringed seals during ice road construction. Noise impacts may result in the harassment of approximately 215 bowheads, 5 gray whales and 15 beluga whales. Year-round operations at Northstar may result in the harassment of up to approximately 95 ringed seals and 1 bearded seal being harassed and the incidental mortality of up to 5 ringed seal pups.

As oil spills are highly unlikely, impacts on marine mammals from an oil spill are also unlikely to take place. However, in order to mitigate the potential for impacts on bowheads and the subsistence use of bowheads, BPXA has confirmed to NMFS that it will not drill into oil-bearing strata during periods of open water or broken ice, essentially the time period between June 13 and ending with the presence of 18 inches of continuous ice cover for one-half mile in all directions. This mitigation is due to the present lack of adequate ability to clean up after an oil spill has occurred. Additional mitigation has been proposed by BPXA to the North Slope Borough native community to ensure that, in the event that an oil spill did occur, it would not have an unmitigable adverse impact on the subsistence use of the bowhead whale.

National Environmental Policy Act (NEPA)

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act , May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined, based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996); the Corps of Engineers' 1998 Final Environmental Impact Statement for Northstar construction and oil production; and the contents, results, and analyses of BP's marine mammal monitoring program from 1999 through October, 2002, will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, based on this analysis, the action of issuing an LOA governing the incidental taking of marine mammals, by harassment for this activity meets the definition of a ''Categorical Exclusion'' as defined under NOAA Administrative Order 216–6 and is exempted from further environmental review.

Endangered Species Act

On March 4, 1999, NMFS concluded consultation, under the Endangered Species Act, with the U.S. Army Corps of Engineers on permitting the construction and operation at the Northstar site. The finding of that consultation was that construction and operation at Northstar is not likely to jeopardize the continued existence of the bowhead whale stock. Because issuance of a small take authorization to BPXA under section 101(a)(5)(A) of the MMPA is a Federal action, NMFS has completed section 7 consultation on this action. The finding of this consultation was that the issuance of the subject small take authorization was unlikely to adversely affect the bowhead whale.

Determinations

In NMFS' final 5–year rule notice published on May 25, 2000 (63 FR 32207), and in the notice published on December 21, 2001 (66 FR 65923) regarding the LOA for oil production at Northstar and in internal supporting documentation, NMFS has determined, that the taking of marine mammals incidental to oil production operations at the Northstar offshore oil and gas facility in state and federal waters, will not result in more than the incidental taking of small numbers of bowhead whales, beluga whales, ringed seals, and, possibly California gray whales, bearded seals and spotted seals. NMFS noted in addition, that the taking will have only a negligible impact on these marine mammal stocks, would not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses, and would result in the least practicable impact on these stocks. As the results from the monitoring program carried out since 1999 have not indicated that the determinations made in 2000 and 2001 were in error, nor that estimated levels of incidental harassment have been exceeded, and as the activity that was reviewed in 2001 (oil production activities) has not changed, these determinations remain valid.

Dated: December 9, 2002.

Laurie K. Allen,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–31982 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121102A]

Marine Fisheries Advisory Committee; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from January 7 through 10, 2003.

DATES: The meetings are scheduled as follows:

January 7, 2003, 8 a.m. - 5:30 p.m.
January 8, 2003, 8:30 a.m. - 5:30 p.m.
January 9, 2003, 9 a.m. - 5 p.m.
January 10, 2003, 8 a.m. - 12 noon

ADDRESSES: The meetings will be held at Hotel Washington, 515 15th Street, NW, Washington D.C. Requests for special accommodations may be directed to MAFAC, Office of Constituent Services, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, Designated Federal Official; telephone: (301) 713–9501 ext. 171.

SUPPLEMENTARY INFORMATION: As required by section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1972, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries, and of environmental, state, consumer, academic, tribal, and other national interests.

Matters to Be Considered

January 7, 20003

Orientation and program briefings for new MAFAC members.

January 8, 2003

Overview of NOAA Fisheries, including progress toward regulatory streamlining efforts, agency's assessment of its progress in implementing the Sustainable Fishing Act, and progress toward a national bycatch strategy. The key challenges and priorities for 2003 will be discussed along with MAFAC's role in contributing to those priorities. Topics for discussion include reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act(Magnuson-Stevens Act) and various management components such as individual fishing quotas, overcapacity and the national standards under the Magnuson-Stevens Act. In addition, MAFAC will receive a report on a draft technical guidance document for implementing ecosystem management approaches for marine resource management.

January 9, 2003

Committee will review it's operation, policy and structure and address any operational and organizational modifications as well as conduct subcommittee work on identified issues.

January 10, 2003

Committee will make final reports to NOAA Fisheries and adjourn.

Time will be set aside for public comment on agenda items.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: December 16, 2002.

John Oliver,

Deputy Assistant Administrator for Operations,National Marine Fisheries Service.

[FR Doc. 02–31981 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120302A]

Magnuson-Stevens Act Provisions; Atlantic Highly Migratory Species; Exempted Fishing and Scientific Research Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of 2003 Exempted Fishing and Scientific Research Permits; request for comments.

SUMMARY: NMFS announces the intent to issue Exempted Fishing Permits (EFPs) and Scientific Research Permits (SRPs) for the collection of Atlantic highly migratory species (HMS). These EFPs/SRPs would authorize collections of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean and Gulf of Mexico for the purposes of scientific data collection and public display. Generally, the EFPs will be valid through December 31, 2003. NMFS also announces the intent to issue EFPs upon receiving applications from U.S. fishermen whose vessels fish for Atlantic HMS while operating under contract within the Exclusive Economic Zone of other nations. These EFPs would allow a U.S. fishing vessel to fish so as to be consistent with another country's regulations without violating U.S. regulations, and would ensure that such vessels report to the proper authorities.

DATES: Written comments on these collection, research and fishing activities will be considered by NMFS in issuing such EFPs/SRPs if received on or before January 3, 2003.

ADDRESSES: Send comments to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The EFP/SRP applications and copies of the regulations under which EFPs/SRPs are issued may also be requested from this address. Comments also may be sent via facsimile (fax) to (301)713–1917. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Heather Stirratt or Sari Kiraly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs and SRPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS.

Issuance of EFPs and/or SRPs may be necessary because possession of certain shark species is prohibited, possession of billfishes on board commercial fishing vessels is prohibited, and because the commercial fisheries for bluefin tuna, swordfish and large coastal sharks may be closed for extended

periods, during which collection of live animals and/or biological samples would otherwise be prohibited. In addition, NMFS regulations at 50 CFR 635.32 regarding implantation or attachment of archival tags in Atlantic HMS require prior authorization and a report on implantation activities.

NMFS seeks public comment on its intention to issue EFPs for the purpose of collecting biological samples under at-sea fisheries observer programs. NMFS intends to issue EFPs to any NMFS or NMFS-approved observer to bring onboard and possess, for scientific research purposes, biological sampling, measurement, etc., any Atlantic swordfish, Atlantic shark, or Atlantic billfish, provided the fish is a recaptured tagged fish, a dead fish prior to being brought onboard, or specifically authorized for sampling by the Director of the Office of Sustainable Fisheries at the request of the Southeast Fisheries Science Center or Northeast Fisheries Science Center. On average, several hundred swordfish and sharks are collected by at-sea observers under such EFPs any given year.

Collection of bluefin tuna may be authorized for scientific research, age and growth, genetic, and spawning studies. In 2002, five permits for bluefin tuna archival tagging and research were issued.

EFP and SRP applications will also be considered for experiments addressing gear modifications to reduce bycatch in the Atlantic HMS pelagic longline fisheries. In 2002, NMFS issued one EFP allowing commercial fishing vessels to assist NOAA scientists in conducting bycatch reduction experiments in the Northeast Distant Waters of the Grand Banks.

NMFS intends to continue to issue EFPs to vessel operators requesting offloading windows in the Atlantic Swordfish fishery, in the event the swordfish fishery is closed and a vessel is not equipped with a vessel monitoring system (VMS) that would enable it to remain at sea after the announced closure date. NMFS anticipates that commercial EFP applicants would be captains of larger vessels out on extended trips at the time of a closure announcement. These applicants would benefit from delayed offloading by avoiding market gluts and cold storage problems. Based on an October 16, 2002, court order, NMFS expects to re-establish the regulations requiring VMS on HMS vessels with pelagic long line on board. When that occurs, EFPs to allow delayed offloading would no longer be required.

NMFS also seeks public comment on its intention to issue EFPs for distant water pelagic longline vessels for the purpose of expanding access of U.S. vessels into other markets while continuing to collect information about U.S. fishing effort and landings. NMFS will consider applications from any U.S. Atlantic pelagic longline vessel. NMFS intends to issue such EFPs to any U.S. vessel fishing under contract to another nation, provided its landings and discards are consistent with ICCAT recommendations and, due to the requirements of the contract, those landings are being reported to ICCAT by that other nation or otherwise appropriately accounted for.

NMFS is also seeking public comment on its intention to issue EFPs for the collection of restricted species of sharks for the purpose of public display. In the Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), NMFS established a public display quota of 60 metric tons wet weight for this purpose. NMFS has preliminarily determined that up to 3,000 sharks could be taken with this current quota. NMFS believes that harvesting this amount for public display will have a minimal impact on the stock. In 2002, eight EFPs, which authorized the collection of 695 sharks for display purposes, were issued. Of these authorized collections, only 42 sharks have been reported taken to date.

Generally, the authorized collections or exemptions would involve activities otherwise prohibited by regulations implementing the HMS FMP and Amendment 1 to the Atlantic Billfish Fishery Management Plan. The EFPs, if issued, may authorize recipients to fish for and possess tunas, billfishes, swordfish, and sharks outside the applicable Federal commercial seasons, size limits and retention limits, or to fish for and possess prohibited species.

NMFS is in the process of restructuring the procedures for issuing Federal EFPs/SRPs for highly migratory species. NMFS initiated this process by publishing a Notice of Intent to prepare an Environmental Impact Statement (EIS) for Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks on November 15, 2002 (64 FR 69236). While the Amendment is anticipated to focus primarily upon shark management measures, consideration will be given to revising the EFP/SRP issuance procedures for all Atlantic HMS. NMFS intends to publish an Issues and Options paper summarizing the different permitting options under consideration and will announce the availability of this document at a later date.

Additionally, on December 6, 2002 (64 FR 72629), NMFS published a proposed rule that suggests modification of existing regulations to improve accountability of exempted fishing activities involving Atlantic HMS. If the proposed changes are implemented, permits would be issued under the current regulations and would be valid until the new regulations become effective, at which time revised permits may be issued.

Final decisions on the issuance of any EFPs/SRPs will depend on the submission of all required information about the proposed activities, NMFS' review of public comments received on this notice, consistency with conclusions in the Final Environmental Impact Statement (EIS)contained in the Final HMS FMP (64 FR 13575; March 19, 1999) and any subsequent Environmental Assessments (EAs) and any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any environmental impacts from the issuance of these EFPs other than impacts already assessed in the Final HMS FMP and subsequent EAs.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: December 13, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31983 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

December 17, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that two patented fusible interlining fabrics, used in the construction of waistbands, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On December 12, 2002 the Chairman of CITA received a petition from Levi Strauss and Co. alleging that a certain ultra-fine Lycra crochet material cannot be supplied by the

domestic industry in commercial quantities in a timely manner. The petition requests that apparel of such fabrics be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by January 3, 2003 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota-and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On December 12, 2002 the Chairman of CITA received a petition from Levi Strauss and Co. alleging that certain ultra-fine Lycra crochet outer-fusible material with a fold line that is knitted into the fabric and a fine Lycra crochet inner-fusible material with an adhesive coating that is applied after going through a finishing process to remove all shrinkage from the product, classified under item 5903.90.2500 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles (waistbands), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

The two fabrics at issue are:

Fusible Interlining 1 -

An ultra-fine Lycra crochet outer-fusible material with a fold line that is knitted into the fabric. A patent is pending for this fold-line fabric.

The fabric is a 45mm wide base substrate, crochet knitted in narrow width, synthetic fiber based (49% polyester/43% elastane/8% nylon with a weight of 4.4 oz., a 110/110 stretch and a dull yarn), stretch elastomeric material with adhesive coating that has the following characteristics:

a) The 45mm is divided as follows: 34mm solid followed by a 3mm seam allowing it to fold over followed by 8mm of solid.

b) In the length it exhibits excellent stretch and recovery properties at low extension levels.

c) It is delivered pre-shrunk with no potential for relaxation shrinkage during high temperature washing or fusing and delivered lap laid, i.e., tension free adhesion level will be maintained or improved through garment processing temperatures of up to 350 degrees and dwell times of 20 minute durations.

d) The duration and efficacy of the bond will be such that the adhesive will not become detached from the fabric or base substrate during industrial washing or in later garment wear or after-care of 50 home washes.

In summary, the desired fabric will be an interlining fabric with the above properties. The finished interlining fabric is a fabric that has been coated with an adhesive coating after going through a finishing process to remove all shrinkage from the product and impart a stretch to the fabric. This finishing process of imparting stretch to fabrics is patented, U.S. Patent 5,987,721.

Fusible Interlining 2 -

A fine Lycra crochet inner-fusible material with an adhesive coating that is applied after going through a finishing process to remove all shrinkage from the product. (Sample number 2) This finishing process of imparting stretch to fabrics is patented, U.S. Patent 5,987,721.

Specifically, the fabric is a 40mm synthetic fiber based stretch elastomeric fusible (80% nylon type 6/20% spandex with a weight of 4.4 oz., a 110/110 stretch and a dull yarn), with the following characteristics:

a) It is supplied pre-coated with an adhesive that will adhere to 100% cotton and other composition materials such as polyester/cotton blends during fusing at a temperature of 180 degrees.

b) The adhesive is of a melt flow index which will not strike back through the interlining substrate or strike through the fabric to which it is fused and whose adhesion level will be maintained or improved through garment processing temperatures of up to 350 degrees and dwell times of 20 minute durations.

c) The duration and efficacy of the bond will be such that the adhesive will not become detached from the fabric or base substrate during industrial washing or in later garment wear or after-care of 50 home washes.

d) Delivered on rolls of more than 350 yards or lap laid in boxes.

Both interlining fabrics are classifiable under 5903.90.2500, HTSUS. The adhesive coating adds approximately 25% - 30% weight to the fusible interlining 1 and adds approximately 20% - 25% weight to the fusible interlining 2.

The fusible interlining fabrics are used in the construction of waistbands in pants, shorts, skirts, and other similar products that have waistbands.

Fusible interlining 1 reinforces the twill pant fabric and also exclusively contributes to the ''stretch ability'' of the twill pant fabric in the waistband area. Fusible interlining 2 is used on the underside of the waistband lining fabric. This interlining reinforces the waistband lining, which is made from pocketing-type fabric, and also exclusively contributes to that fabric's ''stretch ability.'' It also serves to ''firm up'' the seam area of the waistband lining so that the fabric will not rip or otherwise be damaged during the assembly/sewing process.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these fabrics for purposes of the intended use. Comments must be received no later than January 3, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee

for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabrics stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–32122 Filed 12–18–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–09; Environmental Meteorology Component of the Atmospheric Science Program (ASP), With focus on Vertical Transport and Mixing

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for the Environmental Meteorology Component of the Atmospheric Science Program (ASP), for the Vertical Transport and Mixing (VTMX) Science Team. The research program supports the Department's Climate Change Research Program, the U.S. Global Change Research Program, and the Administration's goals to understand the meteorological processes associated with air quality and climate change.

DATES: Applicants are strongly encouraged to submit a brief preapplication for programmatic review. The deadline for submission of preapplications isApril 28, 2003. Early submission of preapplications is encouraged.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., June 3, 2003, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2004. The applicants are also asked to submit an electronic copy of the abstract in ASCII format by 4:30 p.m., E.D.T., June 3, 2003, to: *Rick.petty@science.doe.gov.* The abstract should include the following information: PI and co-PIs, their institutions, and a brief summary of research.

Applicants are urged to review abstracts of proposals from DOE Laboratory scientists that have been tentatively selected for funding. Those selected proposals will be located at: *http://www.science.doe.gov/ober/GC/atsi.html* by March 26, 2003. Additionally, The VTMX Science Plan can be viewed at: *http://www.pnl.gov/VTMX.* Applications that are collaborative with or complementary to DOE Laboratory proposals are strongly encouraged.

ADDRESSES: Preapplications referencing Program Notice 03–09 may be sent to the program contact, Rickey Petty, via electronic mail at:*Rick.petty@science.doe.gov* or by U.S. Postal Service Mail at Climate Change Research Division, Office of Biological and Environmental Research, Office of Science, SC–74/Germantown Building, U.S. Department of Energy, 1000Independence Avenue, SW., Washington, DC 20585–1290. Electronic mail is recommended to speed up response to preapplications.

Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Rickey Petty, Climate Change Research Division, Office of Biological and Environmental Research, Office of Science, SC–74/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, telephone: (301) 903–5548, E-mail: *Rick.petty@science.doe.gov*, fax: (301) 903–8519. The full text of Program Notice 03–09 is available via the Internet using the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION: The scope of the research to be supported under this notice is the investigation of atmospheric vertical transport and mixing processes. The geographic focus for this research will be on urban areas affected by nearby elevated terrain, with an emphasis on studies of stably stratified conditions, periods with weak or intermittent turbulence, and morning and evening transition periods.

Background

The measurement and modeling of vertical transport and mixing processes in the lower atmosphere are of fundamental importance to modeling air quality, climate and weather. The upward and downward movements of air parcels in stable and residual layers of the atmosphere and the interactions between adjacent layers are particularly difficult processes to measure and characterize, and significant difficulties also exist in describing the behavior of the atmosphere during morning and evening transition periods. Limited understanding of the effects of heterogeneous land surfaces and complex terrain further limits our

ability to understand and simulate vertical transport and mixing processes.

To address these issues a VTMX science team carried out field campaign in the Salt Lake City region in October 2000. These observations provide a data base for use in modeling and analytical studies, including mesoscale modeling, large eddy simulations (LES), direct numerical simulations (DNS), and conceptual modeling. Additional information on VTMX activities up to the present time may be found at: *http://www.pnl.gov/VTMX/*.

Although advances have been and continue to be made in understanding and modeling vertical transport and mixing, the basic VTMX goals remain the same: to increase understanding of the mechanisms responsible for vertical transport and mixing; to improve our ability to measure and quantify the processes that account for VTMX; and to capture the improved understanding in vertical transport and mixing models.

Our particularly interest in realizing these objectives is to improve the ability to accurately simulate and predict the effects of energy-related emissions on air quality in urban regions affected by adjacent elevated terrain (*e.g.*, urban basins or valleys). The emphasis in this program area of the Atmospheric Science Program is on vertical transport and mixing processes in stably stratified conditions, in conditions of weak or intermittent turbulence, and during morning and evening transition periods.

A significant component of this program revolves around observations and data analyses from cooperative field measurement campaigns in urban basins or valleys. Depending on the availability of funds, the next major field experiment will most likely occur during the fall of 2004, with the Salt Lake City region again being the most likely study area.

Horizontal scales of interest are on the order of two hundred kilometers or less. Vertical scales will depend on the height of the daytime mixed layer and the elevation of any nearby terrain and will generally be on the order of a few kilometers or less. It is realized, of course, that processes involving larger scales may have to be taken into account for a full understanding of smaller-scale ones.

Categories

Applications are solicited in one or more of three principal categories: (1) Analysis of Existing Data Sets; (2) Field Experiments; and (3) Improvement of VTMX Models and Modeling Approaches. Prospective investigators should explicitly specify what category or categories are addressed by their proposed research. Individuals or groups intending to participate in field experiments should describe what measurements they intend to make and what instruments will be used to make them. Those intending to analyze data from one or more instruments or who will use data in numerical or conceptual modeling should specify what data are required for their purposes.

Category 1. Analysis of Existing Data Sets

In addition to the data available from the October 2000 Salt Lake City VTMX field experiment, there are a large number of data sets collected in other field campaigns that may be useful in the study of vertical transport and mixing processes. Analyses or other use of these data may directly contribute to the realization of the program's goals, and they may also help to identify processes to be studied in future field experiments and in the design of those experiments. Such analyses are particularly useful if comparisons or contrasts with findings from the next VTMX field experiments can then be made.

Category 2. Field Experiments

One or more experiments designed explicitly to investigate selected vertical transport or exchange mechanisms will be conducted during the course of the new funding cycle for this program. Measurements will include observations of surface meteorological conditions; vertical profiles of wind velocity, temperature, and humidity; turbulence; surface energy balance, and other quantities that may be relevant to the study of vertical transport or exchange. Measurements and subsequent analysis of the data, in one or more of these areas is encouraged. Novel approaches for obtaining and interpreting remote sensing data, combining results from a variety of instrument platforms, and relating these data to quantities that can be calculated using numerical models are also areas of research that are encouraged.

Instrument development is not anticipated to be an area of research supported by this program. To the extent that the novel use of an instrument might provide crucial measurements for field experiments, or that such experiments might provide an opportunity to apply new instrument technologies developed under other programs, however, support for such activities will be considered.

Category 3. Improvement of VTMX Models and Modeling Approaches

Parameterizations of vertical transport or exchange are often based on assumptions about turbulence that are not applicable in all circumstances or on results of simulations that have been ''tuned'' to match a particular data set. In many cases the choice of parameter values is left to the individual investigator. Numerical models are particularly prone to failure as the atmosphere becomes more stable and in areas where topographic and thermal forcing are significant. New conceptual or numerical approaches may then be required to effect significant improvements in model performance. There is a need not only for further developments in numerical and conceptual modeling but also for more systematic testing and evaluation of the parameterizations and assumptions in these models. Whenever possible, such testing should be based on field data and not simply on model vs. model comparisons.

Science Issues

Relevant science issues that are of interest for this solicitation include:

- Identification of the fundamental processes that control vertical transport for stable and transition boundary layers.
- Measurements to identify and quantify these processes.
- Simulation and prediction of momentum, heat, and moisture surface fluxes in a stratified atmosphere with multiple layers.
- Improving numerical simulations and forecasts of vertical transport and mixing during stable and transition periods.
- Develop formulations for describing vertical diffusion in stable air.
- Improving understanding of how pollutants move through residual layers above stable or convective boundary layers.
- Quantifying the sensitivity of current local dispersion model predictions to variations in the treatment of vertical diffusivity and turbulence, and identify what limits our ability to forecast vertical transport in current numerical models.
- Quantify the effects of the thermal and roughness properties of urban areas on the vertical structure of the boundary layer.
- Determine the nature of (and where possible, quantify) the interaction of synoptic or terrain-induced flows with cold air pools in basins, and assess how such flows affect the formation and erosion of those pools and the dispersion of pollutants in them.

• Improve estimates of surface flux energy budgets.

Programmatic Issues

Collaboration among funded investigators is strongly encouraged for VTMX. Scientists from non-DOE laboratories and universities are encouraged to explore potential areas of collaboration with scientists from one or more of the DOE laboratories by reviewing the abstracts of proposals from the DOE laboratory scientists that have been identified as eligible for funding. The abstracts will be posted at: *http://www.science.doe.gov/aber/GC/atsi.html* approximately March 26, 2003, two months after the closing date of the Lab announcement. It is for this reason that the submission dates for DOE and non-DOE scientists are staggered. Alternatively, non-DOE participants may identify gaps in the research that are not covered by DOE laboratory approved proposals. Note that while independent investigations are anticipated in this program, it is important to keep the programmatic scope (vertical transport and mixing), geographic focus (urban basins or valleys), and areas of emphasis (stable conditions, conditions of weak or intermittent turbulence, and morning and evening transition periods) in mind when proposing and pursuing a course of investigation. Many of the principal research activities of this program will be associated with one or more cooperative major field measurement campaigns conducted by the VTMX community and with the subsequent analysis of the data collected in them. In addition, efforts will be made to encourage scientists funded by other agencies to participate in field experiments and to share data and results with researchers in this program. An annual meeting of program participants and other interested parties is anticipated, and investigators funded under VTMX should plan to attend.

Additionally, favorable consideration will be provided to those preapplications that show synergism with other research components of the Atmospheric Science Program, i.e., Atmospheric Chemistry and Tropospheric Aerosols.

Educational Opportunities

Opportunities exist for the financial support of undergraduate and graduate students wishing to participate in this program through the Department of Energy's Global Change Education Program. Information can be obtained at: *http://www.atmos.anl.gov/GCEP/* on the Internet.

Collaboration

Proposers are strongly encouraged to collaborate with researchers in other institutions, where appropriate, and to include cost sharing wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/Colab.html*.

Program Funding

It is anticipated that approximately $1 million in first-year funding will be available for multiple awards to be made early in Fiscal Year 2004 in the categories described above, contingent upon availability of appropriated funds. Applicants may request project support up to four years, with out-year support contingent on availability of appropriated funds, progress of the research, and programmatic needs. The number of awards and range of funding will depend on the number of applications received and selected for award. Annual budgets are expected to range from $60,000 to $200,000 in total costs.

Preapplications

Potential applicants are strongly encouraged to submit a brief preapplication that consists of two to three pages of narrative describing the research objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the EMP Program. Principal Investigator (PI) address, telephone number, fax number and e-mail address are required parts of the preapplication. A response to each preapplication discussing the potential program relevance of a formal application generally will be communicated within 15 days of receipt. Use of electronic mail for this communication will decrease the possibility of delay in responses to the preapplication.

The deadline for the submission of preapplications is April 28, 2003. Applicants should allow sufficient time so that the formal application deadline is met. SC's preapplication policy can be found on SC's Grants and Contracts Web Site at: *http://www.sc.doe.gov/production/grants/preapp.html.*

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation process will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Both federal and non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The technical portion of the application should not exceed twenty-five double-spaced pages and should include detailed budgets for each year of support requested. Awards are expected to begin on or about November 1, 2004. On the grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and e-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of the National Institutes of Health (NIH) or the National Science Foundation

(NSF) (two to three pages). The applicants are asked to submit an electronic copy of the abstract in ASCII format to: *Rick.petty@science.doe.gov.* The abstract should include the following information: PI and co-PIs, their institutions, and a brief summary of research.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington DC, on December 10, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–31931 Filed 12–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR03–2–000]

Caesar Oil Pipeline Company, LLC; Notice of Petition for Declaratory Order

December 13, 2002.

Take notice that on December 6, 2002, Caesar Oil Pipeline Company, LLC (Caesar Company) filed in Docket No. OR03–2–000, a petition for declaratory order, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2). Caesar Company requests that the Commission issue an expedited decision on this Petition no later than the end of March 2003.

Caesar Company states that it is planning to construct the Caesar oil pipeline system (Caesar System), a major crude oil pipeline designed to transport the maximum volume of oil that is technologically feasible with existing equipment, which will provide transportation for the Green Canyon area of the deepwater Gulf of Mexico to a receiving facility at Ship Shoal 332 in the Outer Continental Shelf. In addition to serving the Green Canyon area, the Caesar System will also be available to provide transportation service to the Walker Ridge and Atwater Valley areas of the deepwater Gulf of Mexico. The Caesar System is anticipated to commence service in 2004, and will serve areas of the deepwater Gulf of Mexico that at this time have little or no available transportation capacity on existing oil pipelines.

Caesar Company states that the Caesar System will be subject to the nondiscrimination provisions of the Outer Continental Shelf Lands Act (the OCSLA), and Caesar Company seeks the requested declaratory order to ensure that the Caesar System will not be subject to common-carrier type pro rata allocation, but will rather be authorized to function as a contract carrier, hold an open season, enter into long-term transportation contracts reflecting contract carriage principles, give those contracts precedence in allocating capacity, and contract for capacity that remains available after the open season closes on a first-come, first-served basis. Caesar Company maintains that the potential of pro rata allocation will likely discourage production development in the Green Canyon, Walker Ridge and Atwater Valley areas, and commitment on the Caesar System by prospective subscribers to capacity, thereby increasing the risk of both the Caesar System and shippers using it.

Accordingly, Caesar Company seeks the following by the end of February 2003:

A Commission declaration that that the Caesar System will be authorized to function as a contract carrier, hold an open season, enter into long-term transportation contracts reflecting contract carriage principles, give those contracts precedence in allocating capacity, and contract for capacity that remains available after the open season closes on a first-come, first-served basis.

Caesar Company requests that the Commission issue the requested declaratory order by the end of March 2003, because (1) as part of their planning for initial production when the Caesar System goes online in 2004 (as currently scheduled), Caesar Company and the shippers to be served by the Caesar System at start-up would like to execute transportation agreements incorporating contract carriage principles and be confident that those agreements are mutually binding and enforceable—lack of resolution that the Caesar System can operate on a contract carriage basis makes this impossible; and (2) in order for the Caesar System to be fully utilized, Caesar Company must obtain future transportation commitments from current and prospective producers that are currently assessing whether they should pursue development of oil field production opportunities in the Green Canyon, Walker Ridge, and Atwater Valley areas, whether the Caesar System will be able to meet their requirements for transportation of production, and whether they must construct their own isolated pipelines to service their production fields.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 10, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32014 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–072]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

December 13, 2002.

Take notice that on December 9, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 20C; First Revised Sheet No. 20D; First Revised Sheet No. 20E; First Revised Sheet No. 20F; and First Revised Sheet No. 20G, with an effective date of December 1, 2002.

Columbia Gulf states that it is filing the tariff sheets to comply with the Commission's orders approving negotiated rate agreements in Docket Nos. RP96–389–052, 054, 055, 060 and 067. The instant filing contains revised tariff sheets reflecting the rate effective on December 1, 2002.

Columbia Gulf states further that copies of the filing has been served on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32029 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–195–000]

Dominion Transmission, Inc.; Notice of Tariff Filing

December 13, 2002.

Take notice that on December 9, 2002, Dominion Transmission, Inc. (DTI) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 308, with an effective date of February 1, 2003.

DTI states that this tariff filing is intended to eliminate potential ambiguity in DTI's Rate Schedule GSS by clarifying that the holder of storage capacity at the start of each Winter Period is responsible for compliance with DTI's minimum turnover requirements. DTI explains that the minimum turnover provisions are intended to provide an incentive for customers to withdraw volumes from storage during the Winter Period consistent with DTI's operational requirements. DTI explains that the minimum turnover requirements are seasonal, not monthly and that this flexibility renders the tariff provisions arguably ambiguous with respect to their application in the event of capacity release during the Winter Period.

DTI states that the only reasonable interpretation of the minimum turnover provisions places the responsibility for the required withdrawals on the only shipper with the opportunity to ensure that withdrawals are made during the Winter Period—that is, the shipper that holds the capacity on November 1 of each year.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32025 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–534–002]

Guardian Pipeline Company, L.L.C.; Notice of Negotiated Rates

December 13, 2002.

Take notice that on December 6, 2002, Guardian Pipeline Company, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 6, proposed to be effective December 7, 2002.

Guardian states that the purpose of this filing is to reflect the implementation of two negotiated rate agreements with Wisconsin Gas Company and WPS Energy Services, Inc. for transportation under Rate Schedule FT–1.

Guardian states that copies of this tariff filing are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32022 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–15–003]

Horizon Pipeline Company, L.L.C.; Notice of Compliance Filing

December 13, 2002.

Take notice that on December 9, 2002, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Second Substitute Original Sheet No. 7A, to be effective April 15, 2002.

Horizon states that the purpose of this filing is to comply with the Commission's order dated November 26, 2002 which directed Horizon to modify the tariff provisions reflected in footnote five on Tariff Sheet No. 7A regarding the segmentation rate and the overlap restriction.

Horizon states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. GT02–15.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32012 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–59–001]

Horizon Pipeline Company, L.L.C.; Notice of Compliance Filing

December 13, 2002.

Take notice that on December 11, 2002, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Substitute Original Sheet No. 195A, to be effective December 2, 2002.

Horizon states that the purpose of this filing is to comply with the Commission's order dated November 26, 2002 in the referenced docket.

Horizon states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP03–59.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32028 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–007]

Iroquois Gas Transmission System, L.P.; Notice of Negotiated Rate

December 13, 2002.

Take notice that on December 10, 2002, Iroquois Gas Transmission; System, L.P. tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fourth Revised Sheet No. 6, to be effective November 1, 2002.

Iroquois states that the revised tariff sheet reflects a negotiated rate between Iroquois and Sempra Energy Trading Corp. (Sempra) for transportation under Rate Schedule RTS beginning on November 1, 2002 through November 1, 2004. The Commission directed Iroquois to file a revised tariff sheet no. 6 to reflect the term of the negotiated rate agreement, which had been unintentionally omitted by Iroquois in the original November 1, 2002 filing.

Iroquois states that the instant filing satisfies the Commission's request. Iroquois proposes an effective date of November 1, 2002 to be consistent with the date the service commenced.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and

interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32030 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–196–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 13, 2002.

Take notice that on December 10, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2003.

Title Page
First Revised Sheet No. 251
First Revised Sheet No. 253
First Revised Sheet No. 401
First Revised Sheet No. 408
Second Revised Sheet No. 415
First Revised Sheet No. 423
First Revised Sheet No. 430
First Revised Sheet No. 436
First Revised Sheet No. 441
First Revised Sheet No. 446
First Revised Sheet No. 482
First Revised Sheet No. 483
First Revised Sheet No. 489
First Revised Sheet No. 492
First Revised Sheet No. 495

Midwestern states that it has moved to a new location. The purpose of this filing is to reflect in its tariff, Midwestern's new address and telephone numbers at the new location.

Midwestern states that it as served copies of the filing upon all of its contracted shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32026 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–448-003]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

December 13, 2002.

Take notice that on December 11, 2002 National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Second Sub. Original Sheet No. 377A, with an effective date of October 1, 2002.

National Fuel states that this filing is being made in compliance with the Commission's order issued on November 26, 2002, in the above-referenced docket. The November 26 Order directed National Fuel to file revised tariff sheet to clarify that it will accept title transfer tracking nominations using the nomination datasets established by NAESB. National Fuel states that in compliance with this directive, it has revised Section 13.1(f)(ii) of its General Terms and Conditions.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32021 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–150–001]

Northern Natural Gas Company; Notice of Compliance Filing

December 13, 2002.

Take notice that on December 6, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute 64 Revised Sheet No. 51, to be effective January 1, 2003.

Northern states that it is refiling a Substitute 64 Revised Tariff Sheet No. 51 to correct the System Balancing Agreement (SBA) Market-to-Market Rate. The correct rate is $0.131 as noted on Substitute 64 Revised Sheet No. 51, rather than $0.132 which was shown on 64 Revised Sheet No. 51 filed on November 27, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be

filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32023 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–197–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tarrif

December 13, 2002.

Take notice that on December 11, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fourth Revised Sheet No. 299A, to be effective on January 11, 2003.

Northern is hereby revising Section 52 (Right of First Refusal) of the General Terms and Conditions of its FERC Gas Tariff to eliminate references to a 5-year term matching cap consistent with the Commission's Order issued in Docket No. RM98–10–011 on October 31, 2002.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32027 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–034]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

December 13, 2002.

Take notice that on December 10, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Third Revised Sheet No. 15 and Original Sheet No. 20, with an effective date of December 10, 2002.

GTN states that these sheets are being filed to reflect the implementation of one negotiated rate agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32031 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR03–3–000]

Proteus Oil Pipeline Company, LLC; Notice of Petition for Declaratory Order

December 13, 2002.

Take notice that on December 6, 2002, Proteus Oil Pipeline Company, LLC (Proteus Company) filed in Docket No. OR03–3–000 a petition for declaratory order, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2).

Proteus Company requests that the Commission issue an expedited decision on this Petition no later than the end of March 2003. Proteus Company states that it is planning to construct the Proteus oil pipeline system (Proteus System), a major crude oil pipeline designed to transport the maximum volume of oil that is technologically feasible with existing equipment, which will provide transportation for the Mississippi Canyon and Atwater Valley areas of the deepwater Gulf of Mexico to a receiving facility at South Pass Block 89 in the Outer Continental Shelf. The Proteus System is anticipated to commence

service in 2005, and will serve areas of the deepwater Gulf of Mexico that at this time have little or no available transportation capacity on existing oil pipelines.

Proteus Company states that the Proteus System will be subject to the nondiscrimination provisions of the Outer Continental Shelf Lands Act (''the OCSLA), and Proteus Company seeks the requested declaratory order to ensure that the Proteus System will not be subject to common-carrier type pro rata allocation, but will rather be authorized to function as a contract carrier, hold an open season, enter into long-term transportation contracts reflecting contract carriage principles, give those contracts precedence in allocating capacity, and contract for capacity that remains available after the open season closes on a first-come, first-served basis. Proteus Company maintains that the potential of pro rata allocation will likely discourage production development in the Mississippi Canyon and Atwater Valley areas, and commitment on the Proteus System by prospective subscribers to capacity, thereby increasing the risk of both the Proteus System and shippers using it.

Accordingly, Proteus Company seeks the following by the end of February 2003:

> A Commission declaration that that the Proteus System will be authorized to function as a contract carrier, hold an open season, enter into long-term transportation contracts reflecting contract carriage principles, give those contracts precedence in allocating capacity, and contract for capacity that remains available after the open season closes on a first-come, first-served basis.

Proteus Company requests that the Commission issue the requested declaratory order by the end of March 2003, because (1) as part of their planning for initial production when the Proteus System goes online in 2005 (as currently scheduled), Proteus Company and the shippers to be served by the Proteus System at start-up would like to execute transportation agreements incorporating contract carriage principles and be confident that those agreements are mutually binding and enforceable—lack of resolution that the Proteus System can operate on a contract carriage basis makes this impossible; and (2) in order for the Proteus System to be fully utilized, Proteus Company must obtain future transportation commitments from current and prospective producers that are currently assessing whether they should pursue development of oil field production opportunities in the Mississippi Canyon and Atwater Valley areas, whether the Proteus System will be able to meet their requirements for transportation of production, and whether they must construct their own isolated pipelines to service their production fields.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 10, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32015 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–191–000]

Questar Pipeline Company; Notice of Tariff Filing

December 13, 2002.

Take notice that on December 9, 2002, Questar Pipeline Company (Questar) tendered for filing of its FERC Gas Tariff, Ninth Revised Sheet No. 1, First Revised Volume No. 1, Fourteenth Revised Sheet No. 40 and First Revised Sheet No. 99L, effective January 10, 2003.

Questar proposed to add section 31, Off-System Services, to Part 1 of the General Terms and Conditions of its FERC Gas Tariff. This section allows Questar to waive the ''shipper must hold title'' policy to the extent that Questar renders service for others using off-system capacity pursuant to its existing tariff and rates. This proposal will not change or impact the quality of service for existing firm or interruptible customers under Questar's tariff. In addition, Questar will be at risk for recovery of any costs associated with the purchase of any off-system capacity.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32024 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–416–001]

Sierra Production Company; Notice of Application

December 13, 2002.

Take notice that on December 3, 2002, Sierra Production Company, (Sierra), filed an application seeking to amend its Presidential Permit issued by the Commission on December 28, 2001, in Docket No. CP01–416–000, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''FERRIS'' link For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202) 502–8659.

In Sierra's December 28 Presidential Permit, the Commission authorized it to construct new pipeline facilities to provide importation service of 5,000 Mcf per day of natural gas from Southern Alberta, Canada to Montana. Sierra states that subsequent to Commission issuance of its Presidential Permit, other producers in the immediate area of Sierra's well in Alberta, Canada have requested Sierra to transport their respective gas production into Sierra's compression and sales facility in Toole County, Montana.

Sierra states the volume will increase to 12,000 Mcf per day and can be accommodated through the permitted facilities. Accordingly, Sierra requests that the Commission amend Articles 1 and 2 of the Presidential Permit to increase the imported natural gas volume from 5,000 Mcf per day to 12,000 Mcf per day.

Any questions regarding the application should be directed to Gary McDermott, C.P.A., Sierra Production Company, PO Box 716, Shelby, Montana, at (406) 434–0018.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 3, 2003, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32010 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TM99–6–29–006, RP00–209–004, RP01–253–006, and RP02–171–004]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

December 13, 2002.

Take notice that on December 9, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets to which sheets are enumerated in Appendix A attached to the filing.

Transco states that the filing is being filed pursuant to a Commission's Order dated October 10, 2002 (October 10 Order) which directed Transco to file, within sixty days revised tariff sheets with revised Fuel Retention Percentages for each annual period beginning April 1, 1999, calculated in accordance with the Commission's instructions in the October 10 Order, together with supporting calculations and workpapers. In addition, the October 10 Order instructed Transco to use the methodology approved in the October 10 Order to calculate the net refunds or billing adjustments to be made, and to include the refund computations and supporting workpapers in its compliance filing.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at

http://www.ferc.gov using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32032 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–28–000, et al.]

Chandler Wind Partners, LLC, et al.; Electric Rate and Corporate Filings

December 13, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Chandler Wind Partners, LLC, Foote Creek II, LLC, Foote Creek III, LLC, Foote Creek IV, LLC, Ridge Crest Wind Partners, LLC, Cinergy Global Power, Inc., Caithness Energy, L.L.C.

[Docket Nos. EC03–28–000, ER01–390–001, ER99–3450–003, ER99–2769–004, ER00–2706–001 and ER01–2760–001]

Take notice that on December 10, 2002, Chandler Wind Partners, LLC, Foote Creek II, LLC, Foote Creek III, LLC, Foote Creek IV, LLC, Ridge Crest Wind Partners, LLC (together, Wind Projects), Cinergy Global Power, Inc. (Cinergy Global), and Caithness Energy, L.L.C. (Caithness) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act and notice of change in status with respect to the transfer of the Wind Projects from Cinergy Global to Caithness.

Comment Date: December 31, 2002.

2. Calpine Parlin, Inc.

[Docket No. EC03–29–000].

Take notice that on December 9, 2002, Calpine Parlin, Inc.(CPI) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application under section 203 of the Federal Power Act for approval of the conversion of CPI's form of business organization to a limited liability company and the addition of an independent director to its board.

Comment Date: December 30, 2002.

3. San Diego Gas & Electric Company, Complainant v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents;

[Docket Nos. EL00–95–045 and Investigation of Practices of the California Independent System Operator and the California Power Exchange EL00–98–042]

On December 12, 2002, Administrative Law Judge Bruce L. Birchman issued a Certification Of Proposed Findings On California Refund Liability (Findings), in the above-docketed proceedings. Initial comments on the Findings are due to be filed with the Commission on or before January 13, 2003. Reply comments shall be filed on or before February 3, 2003.

4. City of Vernon, California

[Docket No. EL03–31–000]

Take notice that on December 9, 2002, the City of Vernon, California (Vernon) tendered for filing the annual update to its Transmission Revenue Balancing Account Adjustment (TRBA Adjustment) and to Appendix I of its Transmission Owner Tariff (TO Tariff), to reflect that update.

Consistent with the California Independent System Operator Corporation (ISO) FERC Electric Tariff, Vernon requests a January 1, 2003 effective date for its filing.

Vernon states that copies of this filing have been served on the California Independent System Operator Corporation and the three other Participating Transmission Owners, as well as served upon all individuals on the service list in Commission Docket No. EL02–103.

Comment Date: January 8, 2003.

5. Illinois Power Company

[Docket No. EL03–32–000]

Take notice that on December 10, 2002, Illinois Power Company filed a Petition for Declaratory Order Confirming Requirements Under Open-Access Tariff pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207(a)(2), requesting that the Commission issue an order confirming (1) that the Constellation Agreement did not qualify as a designated network resource under Illinois Power's OATT and (2) that the NERC's TLR procedures and the curtailment provisions of the OATT conform to the Commission's design for open-access transmission and obligated Illinois Power to curtail Corn Belt's Network Integration Transmission Service on thirteen days during the summer of 2000. Texas Eastern states that copies of this filing were mailed to Corn Belt and interested state regulatory agencies.

Comment Date: January 9, 2003.

6. New York Independent System Operator, Inc.

[Docket No. ER00–3591–016 and ER00–1969–018]

Take notice that on December 9, 2002, New York Independent Systems Operator, Inc. (NYISO) filed a report on certain Bid Production Cost Guarantee (BPCG) costs and payments, in accordance with Commission's Order on Compliance Filings.

Comment Date: December 30, 2002.

7. Consumers Energy Company

[Docket No. ER03–153–002]

Take notice that on December 11, 2002 Consumers Energy Company (Consumers) tendered for filing a revised cover sheet for the Service Agreement it filed earlier in this docket. Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment Date: January 2, 2003.

8. TXU Pedricktown Cogeneration Company LP

[Docket No. ER03–256–000]

Take notice that on December 9, 2002, TXU Pedricktown Cogeneration Company LP (TXU Pedricktown), tendered for filing a Notice of Succession pursuant to Section 35.16 of the Commission's Regulations, 18 CFR 35.16. As a result of a name change, TXU Pedricktown is succeeding to the tariffs and related service agreements of Pedricktown Cogeneration Limited Partnership, effective December 3, 2002.

Comment Date: December 30, 2002.

9. Arizona Public Service Company

[Docket No. ER03–258–000]

Take notice that on December 9, 2002, Arizona Public Service Company (APS) made a compliance filing in the above-reference docket to update the corrected effective date.

A copy of this filing has been served on all parties of record.

Comment Date: December 30, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–32011 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

December 13, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12354–000.

c. *Date filed:* August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The John Stennis L&D Hydroelectric Project would be located on the Tombigbee River in Lowndes County, Mississippi. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12354–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing John C. Stennis Lock and Dam and Reservoir, would consist of: (1) Two proposed 80-foot-long, 6-foot-diameter steel penstocks, (2) a proposed powerhouse containing two generating units with a combined installed capacity of 2.7 megawatts, (3) a proposed 300-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 17 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3678 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the

Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32016 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

December 13, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12367–000.

c. *Date filed*: September 13, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project*: The Kentucky L&D No. 4 Hydroelectric Project would be located on the Kentucky River in Franklin County, Kentucky. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact*: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12367–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the Corps' existing Kentucky Lock and Dam No.. 4 Dam and Reservoir, would consist of: (1) Two proposed 50-foot-long, 6-foot-diameter steel penstocks, (2) a proposed powerhouse containing two generating units with a combined installed capacity of 2.5 megawatts, (3) a proposed 300-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 15 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3678 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32017 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

December 13, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12376–000.

c. *Date filed*: September 23, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project*: The Millwood Dam Hydroelectric Project would be located on the Little River in Little River and Hempstead Counties, Arkansas. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact*: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12376–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the Corps' existing Millwood Dam and Reservoir, would consist of: (1) Seven proposed 180-foot-long, 8-foot-diameter steel penstocks, (2) a proposed powerhouse containing seven generating units with a combined installed capacity of 13.5 megawatts, (3) a proposed 200-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 83 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3678 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of

application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32018 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 13, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License (5MW or More).

b. *Project No.:* P–2000–036.

c. *Date Filed:* October 31, 2001.

d. *Applicant:* Power Authority of the State of New York.

e. *Name of Project:* St. Lawrence-FDR Power Project.

f. *Location:* Located on the St. Lawrence River near Massena, in St. Lawrence County, New York. There are no Federal lands located within the project boundary.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Joseph J. Seymour, Chairman and Chief Executive Officer, Power Authority of the State of New York, 30 South Pearl Street, Albany, NY 12207–3425, (518) 433–6751. Mr. John J. Suloway, Director, Licensing Division, Power Authority of the State of New York, 123 Main Street, White Plains, NY 10601–3170, (914) 287–3971.

i. *FERC Contact:* Ed Lee, (202) 502–6082 or E-Mail *Ed.Lee@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Pursuant to Order No. 619, the Federal Energy Regulatory Commission (FERC) now accepts certain ''qualified documents'' via the Internet in lieu of paper filing. ''Qualified documents'' may be submitted electronically only by accessing the E-Filing link at*http://www.ferc.gov*.

Comments received via e-mail are not placed in the public record.

''Qualified documents'' that may by submitted electronically in lieu pf paper and the procedures for e-filing ''qualified documents'' are described in FERC's User Guide for Electronic Filing of Qualified Documents, which can be accessed via FERC's Web site*http://www.ferc.gov*/e-filing. For assistance with filing qualified documents electronically, you can contract FERC's Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing St. Lawrence-FDR Power Project is part of the International St. Lawrence Power Project which spans the international portion of the St. Lawrence River and consists of two power developments: (1) The Robert H. Saunders Generating Station and (2) St. Lawrence-FDR Power Project. The Power Authority of the State of New York operates the St. Lawrence-FDR Power Project and the Ontario Power Generation operates the Robert H. Saunders Generating Station (located in Canada and not subject to the jurisdiction of the Commission).

The St. Lawrence-FDR Power Project facilities include (a) all or portions of four dams (Robert Moses Power Dam, Long Sault Dam, Massena Intake, and the U.S. portion of the Iroquois Dam), (b) generating facilities, (c) the U.S. portion of a reservoir (Lake St. Lawrence), (d) seven dikes, and (e) appurtenant facilities. The project has a total installed capacity of 912,000-kW and an average annual generation of about 6,650,000 megawatt hours. All generated power is utilized within the applicant's electric utility system.

m. A copy of the application is available for inspection and reproduction during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 502–8371. In addition, the application may be viewed and/or printed via the internet through FERC's Home Page (*http://www.ferc.gov*). From

FERC's Home Page on the internet, the application and other filings and issuances regarding this application are available in the Federal Energy Regulatory Records Information System (FERRIS). To access this information in FERRIS, for the St. Lawrence Hydroelectric Project license application, enter the application's docket number (*i.e.*, P–2000) and sub-docket number (*i.e.*, 036) where specified. User assistance is available for FERRIS and FERC's website, during normal business hours, from our Help line at (202) 502–8258 or the Public Reference Room at (202) 502–8371. A copy of the application is also available for inspection and reproduction from the applicant at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Procedural schedule and final amendments: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Milestone activity	Date
Notice Application Ready For EA (REA) and Soliciting Comments And Recommendations	December 2002.
Notice Of The Availability Of The Draft NEPA document	April 2003.
Notice Of The Availability Of The Final NEPA document	July 2003.
Order issuing the Commission's Decision on the application	September 2003.

Final amendments to the application must be filed with the Commission no later than 45 days from the issuance date of the notice that the application is REA and soliciting comments and recommendations.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32019 Filed 12–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Environmental Report Preparation and Post-Certificate Environmental Compliance Training Seminars

December 13, 2002.

The Office of Energy Projects (OEP) staff will conduct five sessions of its Environmental Report Preparation Seminar, as well as five sessions of the Post-Certificate Environmental Compliance Seminar, throughout 2003. The training seminars will be delivered by FERC staff and consultants with significant industry experience.

Details on the content of both seminars and the scheduled training locations are provided below. For more information for the courses visit the FERC Web site at *http://www.ferc.gov/gas/industry_seminars_home.htm* and to register for the courses, visit the Web site for these training sessions at *http://www.ferc-envtraining.com* or call (650) 712–6610. Registration for each course will be limited; so, although there is no charge for the course, all participants must register in advance.

Environmental Report Preparation (1-Day Seminar)

This one-day seminar will discuss the environmental documentation required for certificate applications prepared under Subpart A of 18 CFR 157 and Sections 7(a), 7(b), and 7(c) of the Natural Gas Act (NGA). Subpart F blanket projects and Section 2.55 replacements are covered in the manual but will not be discussed during the seminar. The seminar will assist each trainee in preparing the environmental report required for filing applications with FERC for project construction or abandonment. The presentation will address the information necessary to meet the FERC's minimum filing requirements and will cover the following topics:

1. General Project Description
2. Water Use and Quality
3. Fish, Wildlife, and Vegetation
4. Cultural Resources
5. Socioeconomics and Environmental Justice
6. Geological Resources
7. Soils
8. Land Use, Recreation, and Aesthetics
9. Air and Noise Quality
10. Alternatives

The seminar will also include a general background discussion of the FERC's environmental process as well as efforts to enhance landowner and other stakeholder involvement during the pre-filing process which potentially includes beginning the National Environmental Policy Act process during the development stage of a project. Participants will receive a certificate of attendance at the end of the session and an updated copy of the Guidance Manual for Environmental Report Preparation.

The Environmental Report Preparation Seminars will be held as shown on the attached table. More detailed information on these courses will be posted on the Web site referenced above.

Post-Certificate Environmental Compliance (2-Day Seminar)

This two-day seminar will cover the FERC's post-certificate regulatory process and construction and restoration requirements. The seminar

will provide each trainee with knowledge of the basic environmental requirements of most FERC certificates and the Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and the Wetland and Waterbody Construction and Mitigation Procedures (Procedures) and will address the following compliance topics:

- Preconstruction planning
- Post-certificate filings, including cultural resources requirements, implementation plan, threatened and endangered species
- Waterbody crossings
- Wetland construction
- Erosion control
- Residential construction
- Agricultural mitigation
- Variance procedures
- Right-of-way restoration and post-construction activities

In the morning before each day of the seminar begins, we will also offer an ''early-bird'' session on Pipeline Construction (Day 1) and Recent Changes to the FERC Plan and Procedures (Day 2) for those participants who feel they would benefit. Participants must register for these early-bird sessions when registering for the seminar. The Pipeline Construction session will be for those who are inexperienced in basic pipeline construction practices. The Recent Changes to the FERC Plan and Procedures session will be of special interest to those individuals who are familiar with the old versions of these documents which were dated December, 1994.

Registered participants will receive a certificate of attendance at the end of the session and an updated copy of the Natural Gas Pipeline Environmental Compliance Workbook.

The Post-Certificate Environmental Compliance Seminars will be held as shown on the attached table. More detailed information on these courses will be posted on the Web site referenced above.

Linwood A. Watson, Jr.,
Deputy Secretary.

Schedule of Training Seminars (FY 2003)

Dates, Location, and Seminar (Day 1) (Days 2 & 3)

January 28, 29–30, Houston, ER Preparation Compliance
February 25, 26–27, Las Vegas, ER Preparation Compliance
March 18, 19–20, Atlanta, ER Preparation Compliance
April 22, 23–24, Pittsburgh, ER Preparation Compliance
May 20, 21–22, Houston, ER Preparation Compliance

[FR Doc. 02–32013 Filed 12–18–02; 8:45 am]
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 13, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

EXEMPT

Docket No.	Date filed	Presenter or requester
1. CP98–150–000	12–9–02	MaryAlyce Daley.
2. RP00–241–000	12–9–02	Dr. Jan Meshkoff.
3. RP00–241–00	12–9–02	Lauri Rose.
4. Project No. 1827–000	12–10–02	Nancy Kochan.
5 RP00–241–000	12–10–02	William T. Bostcock, et al. *.
6. CP02–396–000	12–12–02	Edgar F. Scales.
7. CP02–204–000	12–13–02	Bryan Kelly.

* One of a group of 88 ''Citizen Letters'' (form letters) filed in this docket.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32020 Filed 12–18–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7423–9]

Solicitation Notice; Environmental Education Grants Program, Fiscal Year 2003

Contents

Section I. Overview and Deadlines

A. Overview

Subject to Congressional action to appropriate funds for EPA's Environmental Education Grant Program, this document solicits grant proposals from education institutions, environmental and educational public agencies, and not-for-profit organizations to support environmental education projects. In recent years, EPA has traditionally received funding of approximately $3 million annually for this grant program. At the time of issuance of this Solicitation Notice, future funding for the program is uncertain because the federal budget for 2003 is not yet final. However, EPA decided not to miss the annual grant cycle by failing to issue a Solicitation Notice. Since EPA cannot currently anticipate what the appropriation will or will not be, we are advising potential grant applicants to refer to our website closer to the application deadline to determine the status of funding for the program (www.epa.gov/enviroed). EPA reserves the right to reject all proposals and make no awards.

This solicitation notice contains all the information and forms necessary to prepare a proposal. If your project is selected as a finalist after the evaluation process is concluded, EPA will provide you with additional Federal forms needed to process your proposal. These grants require non-federal matching funds for at least 25% of the total cost of the project.

The Environmental Education Grants Program provides financial support for projects which design, demonstrate, or disseminate environmental education practices, methods, or techniques, including assessing environmental and ecological conditions or specific environmental issues or problems. This program is authorized under section 6 of the National Environmental Education Act of 1990 (the Act) (Pub. L. 101–619).

B. Environmental Education Versus Environmental Information

Environmental Education: Increases public awareness and knowledge about environmental issues and provides the skills to make informed decisions and take responsible actions. It is based on objective and scientifically sound information. It does not advocate a particular viewpoint or course of action. It teaches individuals how to weigh various sides of an issue through critical thinking and it enhances their own problem-solving and decision making skills.

Environmental Information: Proposals that simply disseminate ''information'' will not be funded. These would be projects that provide facts or opinions about environmental issues or problems, but may not enhance critical-thinking, problem solving or decision-making skills. Although information is an essential element of any educational effort, environmental information is not, by itself, environmental education.

C. Due Date and Grant Schedule

(1) *Due Date*—February 14, 2003 is the *postmark* due date for an original proposal signed by an authorized representative, plus one copy to be mailed to EPA. Proposals mailed or sent after this date will not be considered for funding.

(2) *Rejection Letters*—EPA Headquarters and the 10 Regional Offices mail these letters at different times as determined by scheduling to accommodate review teams. Letters are usually sent within 6 months after submission of proposals.

(3) *Start Date for Projects*—September 1, 2003 is the *earliest* start date that applicants should plan on and enter on their application forms and timelines. Budget periods cannot exceed *one-year* for small grants of $10,000 or less. EPA prefers a one-year budget period for larger grants, but will accept a budget period of up to two-years, if the project timeline clarifies that more than 12 months is necessary for full implementation of the project.

D. Addresses for Mailing Proposals

Proposals requesting over $25,000 in *Federal* environmental education grant funds must be mailed to EPA Headquarters in Washington, DC; proposals requesting $25,000 or less in Federal funds must be mailed to the EPA Regional Office where the project takes place. The Headquarters address and the list of Regional Office mailing addresses by state are included at the end of this notice.

E. Dollar Limits Per Proposal

Each year, this program generates a great deal of public enthusiasm for developing environmental education projects. Consequently, EPA receives many more applications for these grants than can be supported with available funds. The competition for grants is intense, especially at Headquarters which usually receives over 250 proposals and is usually able to fund 10 to15 grants or about 5% of the applicants. The EPA Regional Offices receive fewer applications and on average fund over 30% each year.

Grants in excess of $100,000 are seldom awarded through this program. Although the Act sets a maximum limit of $250,000 in environmental education grant funds for any one project, because of limited funds, EPA prefers to award smaller grants to more recipients. In summary, you will significantly increase your chance of being funded if your budget is competitive and you request $5,000 or less from a Regional Office or $100,000 or less from Headquarters.

Section II. Eligible Applicants and Activities

F. Eligible Applicants

Any local education agency, state education or environmental agency, college or university, not-for-profit organization as described in section 501(C)(3) of the Internal Revenue Code, or noncommercial educational broadcasting entity may submit a proposal.

''Tribal education agencies'' which may also apply include a school or community college which is controlled by an Indian tribe, band, or nation, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs. Tribal organizations do not qualify unless they meet this criteria or the not-for-profit criteria listed above. The terms for eligibility are defined in section 3 of the Act and 40 CFR 47.105.

Applicant organizations must be located in the United States and the majority of the educational activities must take place in the United States, Canada and/or Mexico. A teacher's school district, an educator's nonprofit organization, or a faculty member's

college or university may apply, but an individual teacher, educator, or faculty member *may not*.

G. Multiple or Repeat Proposals

An organization may submit more than one proposal if the proposals are for different projects. No organization will be awarded more than one grant for the same project during the same fiscal year. Applicants who received one of these grants in the past may submit a new proposal to expand a previously funded project or to fund an entirely different one. Each new proposal will be evaluated based upon the specific criteria set forth in this solicitation and in relation to the other proposals received in this fiscal year. Due to limited resources, EPA does not generally sustain projects beyond the initial grant period. This grant program is geared toward providing seed money to initiate new projects or to advance existing projects that are ''new'' in some way, such as reaching new audiences or new locations. If you have received a grant from this program in the past, it is essential that you explain how your current proposal is new.

H. Restrictions on Curriculum Development

EPA strongly encourages applicants to use and disseminate existing environmental education materials (curricula, training materials, activity books, *etc.*) rather than designing new materials, because experts indicate that a significant amount of quality educational materials have already been developed and are under-utilized. EPA will consider funding new materials *only* where the applicant demonstrates that there is a need, *e.g.*, that existing educational materials cannot be adapted well to a particular local environmental concern or audience, or existing materials are not otherwise accessible. The applicant must specify what steps they have taken to determine this need, *e.g.*, you may cite a conference where this need was discussed, the results of inquiries made within your community or with various educational institutions, or a research paper or other published document. Further, EPA recommends the use of a publication entitled *Environmental Education Materials: Guidelines for Excellence* which was developed in part with EPA funding. These guidelines contain recommendations for developing and selecting quality environmental education materials. On our Web site ''*http://www.epa.gov/enviroed/resources*'' you may view these guidelines and find information about ordering copies.

I. Ineligible Activities

Environmental education funds cannot be used for:

(1) Technical training of environmental management professionals;

(2) Environmental ''information'' projects that have no educational component, as described in Section I (B);

(3) Lobbying or political activities, in accordance with OMB Circulars A–21, A–87 and A–122;

(4) Advocacy promoting a particular point of view or course of action;

(5) Non-educational research and development; or

(6) Construction projects—EPA will not fund construction activities such as the acquisition of real property (*e.g.*, buildings) or the construction or modification of any building. EPA may, however, fund activities such as creating a nature trail or building a bird watching station as long as these items are an integral part of the environmental education project, and the cost is a relatively small percentage of the total amount of federal funds requested.

Section III. Funding Priorities

J. Educational Priorities

All proposals must satisfy the definition of ''environmental education'' under section I(B) and also address one of the following educational priorities. The order of the list is random and does not indicate a ranking. Please read the definitions that are included in this section to prevent your application from being rejected for failure to correctly address a priority.

(1) *Capacity Building:* Increasing capacity to develop and deliver coordinated environmental education programs across a state or across multiple states.

(2) *Education Reform:* Utilizing environmental education as a catalyst to advance state, local, or tribal education reform goals.

(3) *Community Issues:* Designing and implementing model projects to educate the public about environmental issues and/or health issues in their communities through community-based organizations or through print, film, broadcast, or other media.

(4) *Health:* Educating teachers, students, parents, community leaders, or the public about human-health threats from environmental pollution, especially as it affects children, and how to minimize human exposure to preserve good health.

(5) *Teaching Skills:* Educating teachers, faculty, or nonformal educators about environmental issues to improve their environmental education teaching skills, *e.g.*, through workshops.

(6) *Career Development:* Educating students in formal or nonformal settings about environmental issues to encourage environmental careers.

(7) *Environmental Justice:* Educating low-income or culturally-diverse audiences about environmental issues, thereby advancing environmental justice.

Definitions: The terms used above and in Section IV are defined as follows:

Capacity Building is a significant EPA goal, however, many proposals have been rejected for failure to satisfy the scope of this definition. Read this whole paragraph carefully and please note that it requires networking with various types of educational organizations and statewide implementation of educational programs. If your project fails to meet these objectives, please select another educational priority. For purposes of this program ''Capacity Building'' refers to developing effective leaders and organizations that design, implement, and link environmental education programs across a state or states to promote long-term sustainability of the programs. Coordination should involve all major education and environmental education providers including state education and natural resource agencies, schools and school districts, professional education associations, and nonprofit educational and tribal organizations. Effective efforts leverage available resources and decrease fragmentation of effort and duplication across programs. Examples of activities include: Identifying and assessing needs and setting priorities; identifying, evaluating and linking programs; developing and implementing strategic plans; identifying funding sources and resources; facilitating communication and networking; promoting sustained professional development; and sponsoring leadership seminars. If existing capacity building efforts are underway in your state please explain how you will support those efforts with your proposal. For an excellent example of a successful project please see *www.epa.gov/enviroed* and read the grant profile for the 1999 Ohio Environmental Education Council.

Education Reform refers to state, local, or tribal efforts to improve student academic achievement. Where feasible, collaboration with private sector providers of technology and equipment is recommended. Education reform efforts often focus on changes in curriculum, instruction, assessment or how schools are organized. Curriculum and instructional changes may include

inquiry and problem solving, real-world learning experiences, project-based learning, team building and group decision-making, and interdisciplinary study. Assessment changes may include developing content and performance standards and realigning curriculum and instruction to the new standards and new assessments. School site changes may include creating magnet schools or encouraging parental and community involvement. *Note: All proposals must identify existing educational improvement needs and goals and discuss how the proposed project will address these needs and goals.*

Environmental issue is one of importance to the community, state, or region being targeted by the project, *e.g.*, one community may have significant air pollution problems which makes teaching about human health effects from it and solutions to air pollution important, while rapid development in another community may threaten a nearby wildlife habitat, thus making habitat or ecosystem protection a high priority issue.

Environmental Justice refers to the fair treatment of people of all races, cultures, and income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. No racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences that might result from the operation of industrial, municipal, and commercial enterprises and from the execution of federal, state, local, and tribal programs and policies.

Partnerships refers to the forming of a collaborative working relationship between two or more organizations such as governmental agencies, not-for-profit organizations, educational institutions, and/or the private sector. It may also refer to intra-organizational unions such as the science and anthropology departments within a university collaborating on a project.

Wide application refers to a project that targets a large and diverse audience in terms of numbers or demographics; or that can serve as a model program elsewhere.

Section IV. Requirements for Proposals and Matching Funds

K. Contents of Proposal and Scoring

In the order listed here, the proposal must contain the following: (1) *Two* standard Federal forms; (2) project summary sheet; (3) project description; (4) detailed budget; (5) timeline; (6) description of personnel; and (7) letters of commitment (if you have partner organizations). Please follow the instructions below and do not submit additional items. EPA must make copies of your proposal for use by grant reviewers. Unnecessary cover letters, attachments, forms or binders create a paperwork burden for the reviewers and failure to follow instructions may lower your score.

Federal Forms: Application for Federal Assistance (SF–424) and Budget Information (SF–424A): These two forms are required for all federal grants and must be submitted on the front of your proposal. The two forms, along with instructions specific to this program and examples, are included at the end of this notice. Only finalists will be asked to submit the additional federal forms necessary to process a proposal.

Work Plan and Appendices: A work plan describes your proposed project and your budget. Appendices establish your timeline, your qualifications, and any partnerships with other organizations. Include all five sections described below in the same order in which each is listed. Correct order ensures that reviewers easily evaluate your proposal without overlooking information. Each section is evaluated and scored by reviewers. The highest possible score per proposal is 100 points as outlined below and in paragraph (N).

(1) *Project Summary:* Provide the following overview of your entire project in this format and on *one page only:*

(a) *Organization:* Describe: (1) Your organization, and (2) list your key partners for this grant, if applicable. Partnerships are encouraged and considered to be a major factor in the success of projects.

(b) *Summary Statement:* Provide an overview of your project that explains the concept and your goals and objectives. This should be a very basic explanation in layman's terms to provide a reviewer with an understanding of the purpose and expected outcome of your educational project.

(c) *Educational Priority:* Identify which priority listed in section III you will address, such as education reform. Proposals may address more than one educational priority, however, EPA cautions against losing focus on projects. Evaluation panels often select projects with a clearly defined purpose, rather than projects that attempt to address multiple priorities at the expense of a quality outcome.

(d) *Delivery Method:* Explain how you will reach your audience, such as workshops, conferences, field trips, interactive programs, etc.

(e) *Audience:* Describe the demographics of your target audience including the number and types you expect to reach, such as, teachers, students, specific grade levels, ethnic composition, members of the general public, etc.

(f) *Costs:* List the types of activities on which you will spend the EPA portion of the grant funds.

The project summary will be scored on how well you provide an overview of your entire project using the format and topics stated above.

Summary—Maximum Score: 10 points

(2) *Project Description:* Describe precisely what your project will achieve—why, how, when, with what, and who will benefit. Explain each aspect of your proposal in enough detail to answer a grant reviewer's questions. This section is intended to provide you with the flexibility to be creative and does *not* require any specific format for describing your project. However, you should address the following to ensure that grant reviewers can fully comprehend and score your project. Address all criteria in any sequence that best demonstrates the strengths of your project.

This subsection will be scored on how well you design and describe your project and how effectively your project meets the following criteria:

(a) *Why:* Explain the purpose of your project and how it will address an educational priority listed in section III, such as education reform or community issues. Also identify your environmental issue, such as energy conservation, clean air, ecosystem protection, or cross-cutting topics. Explain the importance to your community, state, or region. Specify if the project has the potential for wide application, and/or can serve as a model for use in other locations with a similar audience.

(b) *Who:* Explain who will conduct the project; identify the target audience and demonstrate an understanding of the needs of that audience. Important: explain your recruitment plan to attract your target audience; and clarify any incentives used such as stipends or continuing education credits.

(c) *How:* Explain your strategy, objectives, activities, delivery methods, and outcomes to establish for reviewers that you have realistic goals and objectives and will use effective methods to achieve them. Clarify for the reviewers how you will complete all basic steps from beginning to end. Do not omit steps that lead up to or follow

the actual delivery methods, *e.g.*, if you plan to make a presentation about your project at a local or national conference, specify where.

(d) *With What:* Demonstrate that the project uses or produces quality educational products or methods that teach critical-thinking, problem-solving, and decision-making skills. (Please note restrictions on the development of curriculum and educational materials in Section H.)

Description—Maximum Score: 40 Points (10 Points for Each of (a) Through (d))

(3) *Project Evaluation:* Explain how you will ensure that you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, evaluation tools, observation, or outside consultation.

The project evaluation will be scored on how well your plan will: (a) Measure the project's effectiveness; and (b) apply evaluation data gathered during your project to strengthen it.

Evaluation—Maximum Score: 10 Points (5 Points Each for (a) and (b))

(4) *Budget:* Clarify how EPA funds and non-federal matching funds will be used for specific items or activities, such as personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. Include a table which lists each major proposed activity, and the amount of EPA funds and/or matching funds that will be spent on each activity. Smaller grants with uncomplicated budgets may have a table that lists only a few activities.

Please Note the following funding restrictions:

—Indirect costs may be requested only if your organization has already prepared an indirect cost rate proposal and has it on file, subject to audit.
—Funds for salaries and fringe benefits may be requested *only* for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. EPA strongly encourages applicants to request reasonable amounts of funding for salaries and fringe benefits to ensure that your proposal is competitive.
—EPA will not fund the acquisition of real property (including buildings) or the construction or modification of any building.

Matching Funds Requirement: Non-federal matching funds of at least 25% of the total cost of the project are required, and EPA encourages additional matching funds where possible. The match may be provided by the applicant or a partner organization or institution, and may be provided in cash or by in-kind contributions and other non-cash support. In-kind contributions often include salaries or other *verifiable* costs and this value must be carefully documented. In the case of salaries, applicants may use either minimum wage or fair market value. If the match is provided by a partner organization, the applicant is still responsible for proper accountability and documentation. All grants are subject to Federal audit.

Important: The matching non-federal share is a percentage of the entire cost of the project. For example, if the 75% federal portion is $10,000, then the entire project should, at a minimum, have a budget of $13,333, with the recipient providing a contribution of $3,333. To assure that your match is sufficient, simply divide the Federally requested amount by three. Your match must be at least one-third of the requested amount to be sufficient. For a $5,000 EPA grant your match cannot be less than $1,667.

Other Federal Funds: You may use other Federal funds in addition to those provided by this program, but not for activities that EPA is funding. You may not use any federal funds to meet any part of the required 25% match described above, unless it is specifically authorized by statute. If you have already been awarded federal funds for a project for which you are seeking additional support from this program, you must indicate those funds in the budget section of the work plan. You must also identify the project officer, agency, office, address, phone number, and the amount of the federal funds.

This subsection will be scored on: (a) How well the budget information clearly and accurately shows how funds will be used; (b) whether the funding request is reasonable given the activities proposed; and (c) whether the funding provides a good return on the investment.

Budget—Maximum Score: 15 Points (5 Points for Each of (a) through (c))

(5) *Appendices:*

(a) *Timeline*—Include a ''timeline'' to link your activities to a clear project schedule and indicate at what point over the months of your budget period each action, event, product development, etc. occurs.

(b) *Key Personnel*—Attach a one page resume for the key personnel conducting the project. (Maximum of 3 one page resumes please.)

(c) *Letters of Commitment*—If the applicant organization has partners, such as schools, state agencies, or other organizations, include one page letters of commitment from partners *explaining their role* in the proposed project. Do *not* include letters of endorsement or recommendation or have them mailed in later; they will not be considered in evaluating proposals.

Please do not submit other appendices or attachments such as video tapes or sample curricula. EPA may request such items if your proposal is among the finalists under consideration for funding.

This subsection will be scored based upon: (1) The timeline clarifies the workplan and establishes for reviewers that the project is well thought out and feasible as planned; (2) the qualifications and skills of key personnel to implement the project; and (3) the type of partnership (if any) and the extent to which a firm commitment is made by the partner to provide services, facilities, funding, etc.

Appendices—Maximum Score: 15 Points (5 Points Each (a) Through (c))

(6) *Bonus Points:* Reviewers have the flexibility to provide up to 10 bonus points for exceptional projects based on the following criteria. (a) A maximum of 5 bonus points for: addressing an educational priority or environmental issue well, strong partnerships, solid recruitment plan for teachers or other target audience, creative use of resources, innovation, or other strengths noted by the reviewers. (b) A maximum of 5 bonus points for a well explained and easily read proposal. Factors for points could include: clear and concise, well organized, no unnecessary jargon, and other strengths noted by the reviewers who evaluate and compare proposals.

Bonus Points—Maximum Score: 10 Points (5 Points Each for (a) and (b))

L. Page Limits

The Work Plan should not exceed 5 pages. ''One page'' refers to one side of a single-spaced typed page. The pages must be letter sized ($8\frac{1}{2} \times 11$ inches), with margins at least one-half inch wide and with normal type size (11 or 12 font), rather than extremely small type. The 5 page limit applies to the narrative portion, *i.e.*, the Summary, Project Description, and Project Evaluation. The Detailed Budget, Timeline, and Appendices are not included in the page limit.

M. Submission Requirements and Copies

The applicant must submit one original and *one* copy of the proposal (a signed SF–424, an SF–424A, a work plan, a detailed budget, and the appendices listed above). Do *not* include other attachments such as cover letters, tables of contents, additional federal forms or appendices other than those listed above. *Grant reviewers often lower scores on proposals for failure to follow instructions.* Your pages should be sorted as listed in section IV, with the SF–424 being the first page of your proposal and *signed* by a person authorized to receive funds. Blue ink for signatures is preferred. Proposals must be reproducible; they should not be bound. They should be stapled or clipped once in the upper left hand corner, on white paper, and with page numbers. Mailing addresses for submission of proposals are listed in section IV of this document.

Forms: If you receive this solicitation electronically and if the standard federal forms for Application (SF–424) and Budget (SF–424A) cannot be printed by your equipment, you may locate them the following ways (but please read our instructions which have been modified for this grant program): the **Federal Register** in which this document is published contains the forms and is available to be copied at many public libraries; or you may call or write the appropriate EPA office listed at the end of this document.

Section V. Review and Selection Process

N. Proposal Review

Proposals submitted to EPA headquarters and regional offices will be evaluated using the criteria defined here and in section IV of this solicitation. Proposals will be reviewed in two phases—the screening phase and the evaluation phase. During the screening phase, proposals will be reviewed to determine if they meet the basic eligibility requirements. Only those proposals satisfying all of the basic requirements will enter the full evaluation phase of the review process. During the evaluation phase, proposals will be evaluated based upon the quality of their work plans. Reviewers conducting the screening and evaluation phases of the review process will include EPA officials and external environmental educators approved by EPA. At the conclusion of the evaluation phase, the reviewers will score proposals based upon the scoring system described in detail in section IV. In summary, the maximum score of 100 points can be reached as follows:

(1) Project Summary—10 Points.
(2) Project Description—40 Points.
(3) Project Evaluation—10 Points.
(4) Budget—15 Points.
(5) Appendices—15 Points.
(6) Bonus Points—10 Points (Only for outstanding proposals).

O. Final Selections

After individual projects are evaluated and scored by reviewers, as described above, EPA officials in the regions and at headquarters will select a diverse range of finalists from the highest ranking proposals. In making the final selections, EPA will take into account the following:

(1) Effectiveness of collaborative activities and partnerships, as needed to successfully implement the project;
(2) Environmental and educational importance of the activity or product;
(3) Effectiveness of the delivery mechanism (*i.e.*, workshop, conference, *etc.*);
(4) Cost effectiveness of the proposal; and
(5) Geographic distribution of projects.

P. Notification to Applicants

Applicants will receive a confirmation that EPA has received their proposal once EPA has received all proposals and entered them into a computerized database, usually within two months of receipt. Usually within six months of application, EPA will contact finalists to request additional federal forms and other information as recommended by reviewers.

Section VI. Grantees Responsibilities

Q. Responsible Officials

The Act requires that projects be performed by the applicant or by a person satisfactory to the applicant and EPA. All proposals must identify any person other than the applicant who will assist in carrying out the project. These individuals are responsible for receiving the grant award agreement from EPA and ensuring that all grant conditions are satisfied. Recipients are responsible for the successful completion of the project.

R. Incurring Costs

Grant recipients may begin incurring allowable costs on the start date identified in the EPA grant award agreement. Activities must be completed and funds spent within the time frames specified in the award agreement. EPA grant funds may be used only for the purposes set forth in the grant agreement and must conform to Federal cost principles contained in OMB Circular A–87; A–122; and A–21, as appropriate. Ineligible costs will be reduced from the final grant award.

S. Reports and Work Products

Specific financial and other reporting requirements will be identified in the EPA grant award agreement. Grant recipients must submit formal semi-annual progress reports, unless otherwise instructed in the award agreement. Also, two copies of a final report and two copies of all work products must be sent to the EPA project officer within 90 days after the expiration of the budget period. This submission will be accepted as the final requirement, unless the EPA project officer notifies you that changes must be made.

Section VII. Resource Information and Mailing List

T. Internet: http://www.epa.gov/enviroed

Resources: Please visit our Web site where you can view and download this solicitation notice, tips for developing successful grant applications, descriptions of projects funded under this program by state, and other education links and resource materials. The ''Excellence in EE'' series of publications listed there includes guidelines for: developing and evaluating educational materials; the initial preparation of environmental educators; and using environmental education in grades K–12 to support state and local education reform goals.

U. Other Funding

Please note that this is a very competitive grant program. Limited funding is available and many qualified grant applications will not be reached by EPA. If your project is not funded, you may wish to review other available grant programs in the *Catalog of Federal Domestic Assistance*, which is available at *http://www.cfda.gov/* and in local libraries.

V. Regulatory References

The Environmental Education Grant Program Regulations, published in the **Federal Register** on March 9, 1992, provide additional information on EPA's administration of this program (57 FR 8390; Title 40 CFR, part 47 or 40 CFR part 47). Also, EPA's general assistance regulations at 40 CFR part 31 apply to state, local, and Indian tribal governments and 40 CFR part 30 applies to all other applicants such as nonprofit organizations.

W. Federal Procedures

(1) *Pre-application assistance:* None planned.

(2) *Dispute Resolution Process:* Procedures are in 40 CFR 30.63 and 40 CFR 31.70.

(3) *Confidential Business Information:* Applicants should clearly mark information contained in their proposal which they consider confidential business information. EPA will make final confidentiality decisions as specified in 40 CFR part 2, subpart B. If no such claim accompanies a proposal when it is received by EPA, it may be made available to the public without further notice to the applicant.

X. Mailing List for Environmental Education Grants

EPA annually starts a new mailing list for this grant program, however, all applicants who respond to this Solicitation Notice will automatically be put on the next list to be developed, if there is a future grant cycle. A future cycle is contingent upon availability of funding. If you fail to submit a proposal in response to this Solicitation Notice, but wish to be added to the mailing list, please mail your request along with your name, organization, address, and phone number to: Environmental Education Grant Program (Year 2004), EPA Office of Environmental Education (1704 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Dated: December 12, 2002.

Cece Kremer,

Acting Associate Administrator, Office of Public Affairs.

Mailing Addresses and Information

Applicants who need more information about this grant program or clarification about specific requirements in this Solicitation Notice, may contact the Environmental Education Office in Washington, DC for grant requests of more than $25,000 in Federal funds or their EPA regional office for grant requests of $25,000 or less.

U.S. EPA Headquarters—For Proposals Requesting More than $25,000 From EPA

Mail proposals (regular mail) to: Environmental Education Grant Program, Office of Environmental Education (1704 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Fed Ex, UPS or Courier to: Office of Environmental Education (Room1426 North), 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

Information: Diane Berger or Sheri Jojokian (202) 564–0451.

U.S. EPA Regional Offices—For Proposals Requesting $25,000 or Less

Mail the proposal to the Regional Office where the project will take place, rather than where the applicant is located, if these locations are different.

EPA Region I—CT, ME, MA, NH, RI, VT

Mail proposals to: U.S. EPA, Region I, Enviro Education Grants (MGM), 1 Congress Street, Suite 1100, Boston, MA 02114.

Hand-deliver to: 10th Floor Mail Room, Boston, MA (M–F 8 am–4 pm).

Information: Kristen Conroy, (617) 918–1069.

EPA Region II—NJ, NY, PR, VI

Mail proposals to: U.S. EPA, Region II, Enviro Education Grants, Grants and Contracts Management Branch, 290 Broadway, 27th Floor, New York, NY 10007–1866.

Information: Teresa Ippolito, (212) 637–3671.

EPA Region III—DC, DE, MD, PA, VA, WV

Mail proposals to: U.S. EPA, Region III, Enviro Education Grants, Grants Management Section (3PM70), 1650 Arch Street, Philadelphia, PA 19103–2029.

Information: Judi Braunston, (215) 814–5536.

EPA Region IV—AL, FL, GA, KY, MS, NC, SC, TN

Mail proposals to: U.S. EPA, Region IV, Enviro Education Grants, Office of Public Affairs, 61 Forsyth Street, SW., Atlanta, GA 30303.

Information: Benjamin Blair, (404) 562–8321.

EPA Region V—IL, IN, MI, MN, OH, WI

Mail proposals to: U.S. EPA, Region V, Enviro Education Grants, Grants Management Section (MC–10J), 77 West Jackson Boulevard, Chicago, IL 60604.

Information: Megan Gavin, (312) 353–5282.

Region VI—AR, LA, NM, OK, TX

Mail proposals to: U.S. EPA, Region VI, Enviro Education Grants (6XA), 1445 Ross Avenue, Dallas, TX 75202.

Information: Jo Taylor, (214) 665–2204.

Region VII—IA, KS, MO, NE

Mail proposals to: U.S. EPA, Region VII, Enviro Education Grants, Office of External Programs, 901 N. 5th Street, Kansas City, KS 66101.

Information: Denise Morrison, (913) 551–7402.

Region VIII—CO, MT, ND, SD, UT, WY

Mail proposals to: U.S. EPA, Region VIII, Enviro Education Grants, 999 18th Street (80C), Denver, CO 80202–2466.

Information: Cece Forget, (303) 312–6605.

Region IX—AZ, CA, HI, NV, American Samoa, Guam

Mail proposals to: U.S. EPA, Region IX, Enviro Education Grants, Commun. & Gov't Relations (CGR–3), 75 Hawthorne Street, San Francisco, CA 94105.

Information: Deirdre Nurrre, (415) 947–4290.

Region X—AK, ID, OR, WA

Mail proposals to: U.S. EPA, Region X, Enviro Education Grants, Public Environmental Resource Center, 1200 Sixth Avenue (CEC–124), Seattle, WA 98101.

Information: Sally Hanft, (800) 424–4372, (206) 553–1207.

Instructions for the SF 424—Application

This is a standard Federal form to be used by applicants as a required face sheet for the Environmental Education Grants Program. These instructions have been modified for this program only and do *not* apply to any other Federal program.

1. Check the box marked ''Non-Construction'' under ''Application.''

2. Date application submitted to EPA and applicant's control number (if applicable).

3. State use only (if applicable).

4. If you are currently funded for a related project, enter present Federal identifier number. If not, leave blank.

5. Legal name of applicant organization, name of primary organizational unit which will undertake the grant activity, complete address of the applicant organization, and name, telephone, and FAX number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. You can obtain this number from your payroll office. It is the same Federal Identification Number which appears on W–2 forms. If your organization does not have a number, you may obtain one by calling the Taxpayer Services number for the IRS.

7. Enter the appropriate letter in the space provided.

8. Check the box marked ''new'' since all proposals must be for new projects.

9. Enter U.S. Environmental Protection Agency.

10. Enter 66.951 Environmental Education Grants Program

11. Enter a brief descriptive title of the project.

12. List only the largest areas affected by the project (*e.g.*, State, counties, cities).

13. Self-explanatory (see section I(C) in Solicitation Notice).

14. In (a) list the Congressional District where the applicant organization is located; and in (b) any District(s) affected by the program or project. If your project covers many areas, several congressional districts will be listed. If it covers the entire state, simply put in Statewide. If you are not sure about the congressional district, call the County Voter Registration Department.

15. Amount requested or to be contributed during the funding/budget period by each contributor. Line (a) is for the amount of money you are requesting from EPA. Lines (b–e) are for the amounts either you or another organization are providing for this project. Line (f) is for any program income which you expect will be generated by this project. Examples of program income are fees for services performed, income generated from the sale of a brochure produced with the grant funds, or admission fees to a conference financed by the grant funds. The total of lines (b-e) must be at least 25% of line (g), as this grant has a match requirement of 25% of the Total Allowable Project Costs. Value of in-kind contributions should be included on appropriate lines as applicable. If both basic and supplemental amounts are included, show breakdown on an attached Budget sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Check (b) (NO) since your application does not have to be sent through the state clearinghouse for review.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. The authorized representative is the person who is able to contract or obligate your agency to the terms and conditions of the grant. (Please sign with blue ink.) A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Instructions for the SF–424A—Budget

This is a standard Federal form used by applicants as a basic budget. These instructions *have* been modified for this grant program only and do *not* apply to any other Federal Program. Do NOT fill in Section A—Budget Summary.

Complete Section B—Budget Categories—Columns (1), (2) and (5).

For each major program, function or activity, fill in the total requirements for funds by object class categories. Please round figures to the nearest dollar.

All applications should contain a breakdown by the relevant object class categories shown in Lines (a–h): columns (1), (2), and (5) of section B. Include Federal funds in column (1) and non-Federal (matching) funds in column (2), and put the totals in column (5). Many applications will not have entries in all object class categories.

Line 6(i)—Show the totals of lines 6(a) through 6(h) in each column.

Line 6(j)—Show the amount of indirect costs, but ONLY if your organization has already prepared an ''indirect cost rate'' proposal and has it on file, subject to audit.

Line 6(k)—Enter the total of amounts of Lines 6(i) and 6(j).

Line 7—Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature and source of income in the detailed budget description.

Detailed Itemization of Costs: The proposal must also contain a detailed budget description as specified in the notice in section IV, (K)(4), and should conform to the following:

Personnel: List all participants in the project by position title. Give the percentage of the budget period for which they will be fully employed on the project (*e.g.*, half-time for half the budget period equals 25%, full-time for half the budget period equals 50%, etc.). Give the annual salary and the total cost over the budget period for all personnel listed.

Travel: If travel is budgeted, show destination and purpose of travel as well as costs.

Equipment: Identify all equipment to be purchased and for what purpose it will be used.

Supplies: If the supply budget is less than 2% of total costs, you do not need to itemize.

Contractual: Specify the nature and cost of such services. EPA may require review of contracts for personal services prior to their execution to assure that all costs are reasonable and necessary to the project.

Construction: Not allowable for this program.

Other: Specify all other costs under this category.

Indirect Costs: Provide an explanation of how indirect charges were calculated for this project.

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

EXAMPLE

2. DATE SUBMITTED 02/14/03	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: Wythe County School System

Organizational Unit: Office of Teacher Training

Address (give city, county, state, and zip code): 219 Main Street, Wytheville, VA 12345

Name and telephone number of the person to be contacted on matters involving this application (give area code): Janet Jones (TEL) (540) 223-4567 (FAX) (540) 223-7890

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 12-3456789

7. TYPE OF APPLICANT: (enter appropriate letter in box) B
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Non-Profit; O. Other (Specify)

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY: U.S. ENVIRONMENTAL PROTECTION AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 66.951
TITLE: ENVIRONMENTAL EDUCATION GRANT

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: "Eco-Blue" Teacher Training re: Ecosystems in the Blue Ridge Mountains

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): 3 Counties: Wythe, Smith, Green

13. PROPOSED PROJECT:

Start Date	Ending Date
10/01/03	9/30/04

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project
02	02, 04, 12

15. ESTIMATED FUNDING:

a. Federal	$ 10,000	.00
b. Applicant	$ 3,000	.00
c. State	$	.00
d. Local	$	.00
e. Other	$ 334	.00
f. Program Income	$	.00
g. TOTAL	$ 13,334	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
John Smith	Superintendent of Schools	(540) 223-4231

d. Signature of Authorized Representative: John Smith
e. Date Signed: 02/14/03

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Standard Form 424 REV 1-99.
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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Totals (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

EXAMPLE

SECTION B — BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1) Federal Funds	(2) Non-Federal Match	(3)	(4)	
a. Personnel	$ 4,200	$ 1,600	$	$	$ 5,800
b. Fringe Benefits	400	200			600
c. Travel	500	200			700
d. Equipment					
e. Supplies	2,300	1,000			3,300
f. Contractual	1,200				1,200
g. Construction	XXXXXXXXXXX	XXXXXXXXXXX			XXXXXXXXXXX
h. Other	1,400	334			1,734
i. Total Direct Charges (sum of 6a - 6h)	10,000	3,334			13,334
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$ 10,000	$ 3,334	$	$	$ 13,334
7. Program Income	$	$	$	$	$

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	*Preapplication*
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Non-Profit
O. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

U.S. ENVIRONMENTAL PROTECTION AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 66.951

TITLE: ENVIRONMENTAL EDUCATION GRANT

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
		$		$	$	$
Totals		$		$	$	

SECTION B — BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1) Federal Funds	(2) Non-Federal Match	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction	XXXXXXXXXXX	XXXXXXXXXXX			XXXXXXXXXXX
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$			$

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[FR Doc. 02–31901 Filed 12–18–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7423–6]

EPA Science Advisory Board, Notification of Public Advisory Committee Meeting; Contaminated Sediment Science Plan Review Panel

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Contaminated Sediment Science Plan Review Panel (CSSP Review Panel) of the U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) will meet via teleconference on January 6, 2003, from 3 p.m. to 5 p.m. eastern time. This teleconference meeting will be hosted out of Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, but, due to limited space, seating will be on a first-come basis. The public may also attend via telephone, however, lines may be limited. Information on how to participate is given below.

Background—The background for this review and the charge to the CSSP Review Panel were published in the **Federal Register** (67 FR 49336, July 30, 2000). The notice also included a draft charge to the CSSP Review Panel, a call for nominations for members of the CSSP Review Panel in certain technical expertise areas needed to address the charge and described the process to be used in forming the CSSP Review Panel. Subsequently, notice was published (67 FR 61622, October 1, 2002) of three meetings that have since been convened: a teleconference on October 17, 2002, a meeting in Washington, DC on October 30 and 31, 2002, and another teleconference on November 22, 2002. Details on the activities of the CSSP Review Panel can be found on our Web site at: *http://www.epa.gov/sab/panels/cssprpanel.html.*

Purpose of this Meeting—The purpose of this public teleconference meeting is for the CSSP Review Panel to: (a) Review and revise the panel's draft report as necessary; and (b) approve the report as revised for delivery to the SAB Executive Committee.

For Further Information—To inquire about public participation in the meeting identified above please contact Mr. Lawrence Martin, Designated Federal Officer, CSSP Review Panel, USEPA Science Advisory Board (1400A), Suite 6450DD, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–6497; fax at (202) 501–0323; or via e-mail at *martin.lawrence@epa.gov.* Members of the public desiring additional information about the meeting locations or the call-in number for the teleconference, must contact Mr. Martin at the addresses and numbers identified above.

Submitting Public Comments—The SAB will have a brief period (no more than 10 minutes) available during the Teleconference meeting for applicable public comment. For the Teleconference, the oral public comment period will be divided among the speakers who register. Registration is on a first come basis. Speakers who have been granted time on the agenda may not yield their time to other speakers. Those wishing to speak but who are unable to register in time may provide their comments in writing. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Mr. Martin at the address above no later than noon eastern time on December 30, 2002.

Availability of Review Material—There is one primary document that is the subject of the review. This review document is available electronically at the following site *http://www.epa.gov/sab/panels/cssprpanel.html.* For questions and information pertaining to the review document, please contact Dr. Lee Hofmann, Office of Solid Waste and Emergency Response (OSWER), Mail Code 5103T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 at telephone number 202–566–1928, or by e-mail at: *hofmann.lee@epa.gov.* The Panel's draft report, which will be the topic for the January 6 teleconference, will be available on December 20 at the following site: *http://www.epa.gov/sab/panels/cssprpanel.html.*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than 15 minutes total (unless otherwise indicated above). Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Martin at least five business days prior to the meeting so that appropriate arrangements can be made.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in the Science Advisory Board FY2001 Annual Staff Report which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: November 9, 2002.

A. Robert Flaak,

Acting Director, EPA Science Advisory Board Staff Office.

[FR Doc. 02–31905 Filed 12–1–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0307; FRL–7281–1]

Organophosphate Pesticide; Availability of Naled Interim Risk Management Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the interim risk

management decision (IRED) document for the organophosphate pesticide naled. This decision document has been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: The interim risk management decision document is available in the OPP Docket under docket ID number OPP–2002–0307.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8589; e-mail address: myers.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the interim risk management decision document for naled, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2002–0307. The official public docket consists of the document specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

For questions on the IRED in this document, contact the Chemical Review Manager listed under **FOR FURTHER INFORMATION CONTACT**.

III. What Action is the Agency Taking?

EPA has assessed the risks of naled and reached an IRED for this organophosphate pesticide. Provided that risk mitigation measures are adopted, naled fits into its own risk cup—its individual, aggregate risks are within acceptable levels. Used mainly to control mosquitos and to control insects on a variety of agricultural crops, naled residues in food and drinking water do not pose risk concerns. Naled may no longer be used in and around the home by residents or professional applicators. However, residents can be exposed as bystanders from wide-area mosquito control applications. With mitigation limiting homeowners' and children's exposure, naled fits into its own ''risk cup.'' With other mitigation measures, naled's worker and ecological risks are also below levels of concern for reregistration.

The interim risk management decision document for naled was made through the organophosphate pesticide pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA–USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation.

EPA worked extensively with affected parties to reach the decisions presented in this interim risk management decision document, which conclude, the pilot public participation process for naled. As part of the pilot public participation process, numerous opportunities for public comment were offered as this interim risk management decision document was being developed. The naled interim risk management decision document, therefore, is issued without a formal public comment period concluding review of the individual organophosphate pesticide. The docket remains open, however, and any comments submitted in the future will be placed in the public docket.

The risk assessments for naled were released to the public through notices published in the **Federal Register** on August 12, 1998 (63 FR 43175) (FRL–6024–3), and October 6, 1999 (64 FR 54298) (FRL–6387–6).

EPA's next step under FQPA is to complete a cumulative risk assessment and risk management decision for the organophosphate pesticides, which share a common mechanism of toxicity. This interim risk management decision document on naled cannot be considered final until this cumulative assessment is complete.

When the cumulative risk assessment for the organophosphate pesticides has been completed, EPA will issue its final tolerance reassessment decision for naled and further risk mitigation measures may be needed.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 7, 2002.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–31907 Filed 12–18–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7424–1]

Notice of Availability for Draft Guidance on the Technical Support Document (TSD) for Title V Permitting of Printing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: We are making available for public review a draft of our pending guidance on the design of air permits for the printing sector. Some approaches in the draft TSD would be potentially available to other industry sectors as well. The technical support document provides guidance to State and local permitting authorities on how they can choose to more efficiently design such permits while ensuring that they still meet all substantive and procedural requirements of the Clean Air Act, including, as applicable, the operating permit regulations EPA promulgated as part 70 of title 40, chapter I of the Code of Federal Regulations. While not mandatory, we would recommend that permitting authorities use this guidance where allowed by their regulations and as their resources and needs dictate.

In no instance would this guidance allow sources to not comply fully with any applicable requirement; it only presents more flexible and/or efficient approaches for doing so. Where State regulations allow, the guidance is potentially useful in streamlining the permit issuance process and minimizing the subsequent need for permit revisions. We believe that the draft will also advance high priority goals within the Agency to: (1) Encourage pollution prevention; (2) assure adequate public participation; (3) promote equal or better environmental protection; and (4) facilitate opportunities for sources to comply in a smarter, more efficient fashion.

A draft of this guidance is available for public review for downloading off the Internet (*see* **ADDRESSES**). We do not intend to respond to individual comments, but rather to consider comments and information from the public in the preparation of a final guidance document.

DATES: The review period for this document will close on January 21, 2003. Any comments on the draft guidance must be submitted to EPA by that date.

ADDRESSES: The draft guidance can be accessed at *http://www.epa.gov/ttn/oarpg/*. Comments should be sent to Michael Trutna, Information Transfer and Program Integration Division (C304–03), U.S. EPA, Research Triangle Park, NC, 27711, (919) 541–5345, fax (919) 541–4028, or *trutna.mike@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Trutna at the above address or Gary Rust, Information Transfer and Program Integration Division (C304–04), U.S. EPA, Research Triangle Park, NC, 27711, (919) 541–0358, fax (919) 541–4028, or *rust.gary@epa.gov.* For further information on monitoring or testing issues, please contact Barrett Parker at (919) 541–5635 or *parker.barrett@epa.gov.*

Dated: November 26, 2002.

William Harnett,

Director, Information Transfer and Program Integration Division.

[FR Doc. 02–31906 Filed 12–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7423–7]

Escambia Wood Preserving Site, Brookhaven, MI, Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with Mr. Nelson Case for recovery of past response costs pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Escambia Wood Preserving Site located in Brookhaven, Lincoln County, Mississippi. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: December 4, 2002.

Anita Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–31904 Filed 12–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7424–6]

Proposed CERCLA Administrative Consent Order; In the Matter of: Picillo Farm Superfund Site, Coventry, RI

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for removal action concerning the Picillo Farm Superfund site in Coventry, Rhode Island with the following settling parties: American Cyanamid Company, Ashland, Inc., ISP Environmental Services, Inc., General Electric Company, and Solutia, Inc. The settlement requires the settling parties to submit claims for reimbursement not to exceed $1.4 million to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection with the Regional Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA 01–2003–0007).

DATES: Comments must be submitted on or before January 21, 2003.

ADDRESSES: The proposed settlement is available for public inspection with the Regional Docket Clerk, One Congress Street, Boston, Massachusetts. A copy of the proposed settlement may be obtained from RuthAnn Sherman, U.S.

Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1886. Comments should reference the Picillo Farm Superfund Site, Coventry, Rhode Island, and EPA Docket No. 01–2003–0007 and should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214.

FOR FURTHER INFORMATION CONTACT: RuthAnn Sherman, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1886.

Dated: December 5, 2002.

Stanley D. Chin,

Acting Director, Office of Site Remediation and Restoration.

[FR Doc. 02–31979 Filed 12–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7424–8]

Proposed Administrative Penalty Assessment and Opportunity To Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed assessment of clean water act class II administrative penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who has violated the conditions of a National Pollutant Discharge Elimination System permit may be assessed a penalty in a ''Class II'' administrative penalty proceeding. Class II proceedings under section 309(g) are conducted in accordance with consolidated rules of practice governing the administrative assessment of civil penalties, 40 CFR part 22.

EPA is providing notice of the following Class II penalty proceeding:

In the Matter of Phelps Dodge Corp., Christmas Facility, Docket No. CWA–9–2002–0011; Complainant, Alexis Strauss, Director, Water Division (WTR–1), U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105; Respondent, Phelps Dodge Corp.; filed September 30, 2002; seeking a penalty of up to $137,500 for various discharges from an inactive copper mine and copper ore processing facility, known as the Christmas Facility, located near Winkelman, AZ, to Dripping Springs Wash, in violation of NPDES Permit No. AZ0020516, and for various violations of reporting requirements of that permit.

Procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the consolidated rules. A commenter may present written comments for the record at any time prior to the close of the record.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of the consolidated rules, review the complaint or other documents filed in the proceedings, or comment or participate in the proceedings, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 972–3871. Documents filed as part of the public record in the proceedings are available for inspection during business hours at the office of the Regional Hearing Clerk.

Dated: December 12, 2002.

Kathi Moore,

Chief, Clean Water Act Compliance Office, Water Division.

[FR Doc. 02–31980 Filed 12–18–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1138]

Proposal to Expand the Operating Hours for the On–Line Fedwire® Funds Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; Request for comment.

SUMMARY: The Board requests comment on a proposal to expand the operating hours for the Fedwire Funds Service.[1] Under this proposal, Fedwire would open three and one–half hours earlier than the current opening time of 12:30 a.m. eastern time, and depository institutions would participate in the earlier operating hours on a voluntary basis.[2] The new opening time would be 9 p.m. for on–line funds transfers with a business date of the following calendar day.[3] An earlier Fedwire opening time would further the smooth functioning and continued development of the payments system, as well as improve efficiency and reduce risk in making payments and settlements. The closing time for the service would remain unchanged at 6:30 p.m., thereby expanding the service's operating hours from eighteen hours to twenty–one and one–half hours each business day. The proposal would not affect the operating hours for the origination and telephone advice of credit for off–line funds transfers and would not affect the operating hours for the Fedwire Securities Service.[4]

DATES: Comments must be submitted on or before March 4, 2003.

ADDRESSES: Comments should refer to Docket No. R–1138 and should be submitted to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to *regs.comments@federalreserve.gov*. Comments addressed to Ms. Johnson may also be delivered to the Board's visitors center in the east courtyard of the Eccles Building, located on 20th Street between Constitution Avenue and C Street, NW., between 8 a.m. and 5:30 p.m. Members of the public may inspect comments in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays, pursuant to §261.12, except as provided in §261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), or Lorna R. Prosper–Harley, Senior Financial Services Analyst (202/452–2690), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202/263–4869).

SUPPLEMENTARY INFORMATION:

[1] All references to Fedwire apply to the on–line Fedwire Funds Service unless otherwise noted. Fedwire is a registered servicemark of the Federal Reserve Banks.

[2] All references are to eastern time unless otherwise noted.

[3] For example, if today were Thursday, November 14, 2002, Fedwire would open at 9 p.m., with the business (cycle) date of Friday, November 15, 2002.

[4] The operating hours for off–line funds transfers and securities transfers are outlined in the Federal Reserve Banks' Operating Circulars 6 and 7, respectively.

I. Background

In December 1997, the Federal Reserve Banks (Reserve Banks) expanded the operating day for on–line Fedwire funds transfers from ten hours to eighteen hours – opening weekdays at 12:30 a.m. and closing at 6:30 p.m. (61 FR 216, November 6, 1996). The Board believed that, over the long term, expanded Fedwire hours would enable individual depository institutions and clearing organizations to (1) reduce foreign exchange settlement risk through innovations in payment and settlement practices, and (2) use Fedwire to manage settlement risk early in the day during times of financial stress. The Board also believed that an expansion of Fedwire hours would respond to the payment and settlement needs of both existing and emerging financial markets, including overseas markets that depend on the U.S. dollar.

In 2001, the members of the Wholesale Customer Advisory Group (WCAG) of the Reserve Banks' Wholesale Product Office (WPO) approached the WPO about further expanding the hours for Fedwire.[5] The WCAG believes that, given the continuing globalization of business and payment activity, current Fedwire hours may constrain the ability of U.S. depository institutions that operate in multiple markets and time zones to meet the payment and settlement needs of some current and potential customers. The WCAG also believes that the current Fedwire operating hours may constrain the ability of U.S. depository institutions to manage settlement and operational risks cost effectively. In particular, the WCAG highlighted the need to achieve greater overlap of U.S. wholesale payments system operating hours with those of the Asia–Pacific markets, including Australia, Hong Kong, Japan, and New Zealand. Finally, the WCAG noted that the recent movement of some U.S. dollar clearing and settlement activity offshore has underscored the need for expanded Fedwire operating hours.

The Clearing House Inter–Bank Payments System (CHIPS) also has asked the WPO to consider expanding the on–line Fedwire hours to support longer CHIPS operating hours because of a growing demand in Asia for real–time, final U.S. dollar payments processed during the Asian business day. CHIPS and its participants rely on Fedwire to conduct certain daily funding and settlement activities. Both the CHIPS and WCAG requests are consistent with long–term business and technological developments in wholesale payments markets.

The Board believes that further expansion of Fedwire funds transfer operating hours would support the smooth functioning and continued development of the payments system, and improve efficiency and reduce risk in conducting existing U.S. dollar payments and settlements. Furthermore, an earlier opening of Fedwire may facilitate innovations in payment and settlement services provided by individual institutions and clearing organizations, thereby making a broader and more robust array of payment options generally available in the financial markets.

II. Issues Associated With the Proposed Expanded Fedwire Operating Hours

International Markets. Generally, the Fedwire operating hours fully overlap the operating hours of large–value payment systems in the Americas and Europe.[6] In contrast, the Fedwire operating hours overlap the operating hours of major Asia–Pacific large–value payments systems by only two and one–half to five hours. Some depository institutions believe that substantially expanding the amount of overlap in the operating hours of Fedwire and the Asia–Pacific markets will help to support the development of enhanced and more competitive dollar–based payment and settlement services in the international marketplace. Also, some depository institutions that are active in international markets maintain local money–desk and money–transfer operations in the regions in which they operate. Expanding Fedwire operating hours may provide opportunities for these institutions to consolidate some of their local activities, which could improve their ability to manage globally their dollar funding and related liquidity risks, as well as to reduce costs and increase operational efficiencies.

Domestic Markets. Neither the Board nor the organizations that advocated further expansion of Fedwire operating hours anticipate that an earlier opening of Fedwire would adversely affect domestic markets. Indeed, there may be beneficial effects from enhancements to payment and settlement services offered by financial institutions to the extent that current Fedwire hours act as a barrier to developing these enhancements.

Costs of and Participation in the Expanded Fedwire Hours. The estimated costs for Reserve Banks to open Fedwire three and one–half hours earlier are expected to be negligible and should not affect funds transfer fees paid by depository institutions. While the operational costs incurred by depository institutions that participate in the earlier hours are difficult to estimate, such costs would be incurred voluntarily. In particular, if a depository institution believed that the potential costs of participating in the expanded operating period outweighed the potential benefits, it could choose to remain closed during this period and would therefore not incur additional operating costs.[7] Similarly, potential costs and benefits stemming from streamlining operational, funding, and risk management functions are difficult to estimate. Again, however, depository institutions would only incur costs during the expanded operating period if they voluntarily chose to do so. While depository institutions would not be required to participate in the earlier operating hours, they would still receive funds transfers sent from participating institutions during these hours.

Extensions to the Scheduled Fedwire Closing Time. Today, the Reserve Banks extend the scheduled Fedwire closing time primarily to prevent major market disruptions. If the Board approved an earlier Fedwire opening time, extensions of the scheduled Fedwire closing time could result in greater operating difficulties for some depository institutions, such as the need to compress end–of–day account posting activities. Furthermore, extensions of the closing time beyond a certain point might adversely affect the ability of the Reserve Banks or depository institutions to open Fedwire services for the next business day as scheduled. Such extensions could have significant effects on business during

[5] The WCAG was established by the WPO to provide a mechanism for ongoing communication and collaboration between the WPO and a representative sample of U.S. depository institutions that are major users of wholesale payment services. The WPO and WCAG work together on a variety of initiatives, which include identifying trends in domestic and international banking and financial services that will affect wholesale payment services, and emerging regulatory and policy issues that may affect delivery or use of such services.

[6] The Fedwire operating hours do not overlap the operating hours of the large–value payment system in Switzerland, Swiss Interbank Clearing (SIC) for five and one–half hours.

[7] Nonparticipating institutions may need to review their internal systems and procedures, however, to ensure that they accurately recognize payments sent to them during the early Fedwire operating hours. Fedwire funds transfers contain two dates: (1) a cycle date that represents the date of a specific operational business day within the Fedwire application, and (2) a system date that represents the day the transfer is processed by the Fedwire application. With early Fedwire operating hours, between 9 p.m. and 11:59 p.m., the cycle date will differ from the system date. This situation already exists for depository institutions outside the eastern time zone in today's eighteen–hour Fedwire business day.

the earlier operating hours, particularly if the use of the earlier operating hours were to become significant.[8] In the near term, the Reserve Banks could continue to allow infrequent extensions of the scheduled closing times to preserve orderly market closings. In the long term, the Reserve Banks may have to reevaluate the extension policy to sustain the ability to open Fedwire timely.

Access to Depository Institutions' Account Balances. Under the expanded Fedwire operating hours, depository institutions' Federal Reserve account balances may not reflect all of the previous day's payment activity because certain activity that is processed and posted later in the day may not be posted to accounts by 9 p.m., the start of the next Fedwire operating day.[9] Generally, account balances would reflect all of a business day's activity by about 11 p.m. The Reserve Banks would also notify depository institutions when the day's payment activity has been processed and is reflected fully in their account balances.

Currently, depository institutions can access their account balance information through the Reserve Banks' Account Balance Monitoring System (ABMS) until 10 p.m. on each business day. Under the expanded Fedwire operating hours, ABMS would be available until 7:15 p.m. to access information for the current business day. ABMS would reopen at 8 p.m. for the next business day, and account balances would be considered provisional until all of the previous day's payment activity is processed and posted.

The Reserve Banks also monitor depository institutions' accounts for daylight overdraft purposes on an ex post basis. Under the expanded Fedwire operating hours, depository institutions' reported ex post opening account balances would reflect all of the previous day's payment activity. As a consequence, the reported ex post opening account balance may differ from the ABMS opening account balance because of transactions that are processed late in the day. While account balance differences may exist between ABMS and ex post reports, the Federal Reserve continues to expect depository institutions to manage their accounts according to the daylight overdraft posting rules set forth in the Board's payments system risk policy.[10]

Federal Reserve Intraday Credit and Fees. Under the expanded Fedwire operating hours, the Reserve Banks will continue to provide intraday credit to eligible depository institutions on the same basis as they do today according to the provisions of the Board's payments system risk policy. While the calculation of the daylight overdraft fee will be adjusted under the proposal to reflect the expanded Fedwire operating hours, the fee assessed for the use of intraday credit will not change for an overdraft of a given size and duration.[11]

Monetary Control and Reserve Management. The Board believes that an expansion of Fedwire operating hours will not affect the current process of reserve management for depository institutions. Because there is a sufficient break in time between Fedwire operating days to allow for measuring reserve holdings, monetary measurement and control issues do not arise for the Federal Reserve.

Proposed Expanded Fedwire Hours Implementation Timeframe. If the Board were to adopt a 9 p.m. Fedwire opening time, depository institutions would be given the opportunity to test their systems for the expanded Fedwire hours with the Reserve Banks beginning in the third quarter 2003. Full implementation of the expanded Fedwire operating day from 9 p.m. to 6:30 p.m. would begin in the second quarter of 2004.

III. Request for Comment

The Board requests comments on its proposal to expand the on–line Fedwire operating hours. Specifically, the Board requests comments on whether the opening time for Fedwire should be moved to 9 p.m. or whether a different opening time would be preferable. In addition, the Board is interested in commenters' views regarding the business, market, risk management, and operational issues that should be considered in evaluating the benefits and drawbacks of a 9 p.m. to 6:30 p.m. Fedwire business day. For example, what are the business needs that would warrant an earlier Fedwire opening time? Would the availability of provisional rather than final account balance information in ABMS for the first two hours of the expanded Fedwire day adversely affect the risk management of depository institutions that choose to participate during the early hours? Should the Reserve Banks continue to grant significant extensions to the Fedwire closing time to help mitigate substantial market disruptions (such as those granted during the week of September 11, 2001) even if they result in a significant delay in the Fedwire opening for the next business day?

IV. Competitive Impact Analysis

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy statement ''The Federal Reserve in the Payments System.''[12] Under this policy, the Board assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services, due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences. If the expansion of the on–line Fedwire operating hours creates such an effect, the Board must further evaluate the proposed expansion of hours to assess whether its benefits can be retained while reducing the restrictions on competition.

The Reserve Banks are the only providers of real–time gross settlement of funds transfers in central bank money in the United States. The main alternative provider of funds transfer services and a number of depository institutions have indicated that the expansion of the Fedwire operating hours would make it possible for them to enhance the finality of their U.S. dollar payment and settlement services. As a result, the expansion of Fedwire operating hours would not have a direct and material adverse effect on their ability to compete effectively with the Reserve Banks.

[8] An extension beyond a certain point to the Fedwire Securities Service operating hours could also result in an extension to the Fedwire Funds Service and, consequently, affect the timely opening of Fedwire for the next business day.

[9] The transactions that are processed late in the day include discount window loans and a small percentage of payments associated with check activity, currency and coin shipments, and other activity, such as food coupon deposits. Generally, the dollar amounts and volumes associated with these transactions are not significant.

[10] Depository institutions may also obtain account information using Fedline's web–based Account Management Information (AMI) application or by accessing the Federal Reserve's Integrated Accounting System (IAS). Fedline is a registered trademark of the Federal Reserve Banks.

[11] While the effective annual rate charged on daylight overdrafts would change from 27 basis points under an 18–hour Fedwire operating day to 32.25 basis points under a 21.5–hour Fedwire operating day, the annual rate charged on daylight overdrafts would remain at 36 basis points. This increase in the effective annual rate will not lead to an increase in fees for daylight overdrafts of a given size and duration because there will be an offsetting increase in the number of minutes used to calculate average daylight overdrafts. An example of the daylight overdraft fee calculation is available at *http://www.federalreserve.gov/paymentsystems/psr/overview.pdf*.

[12] Federal Reserve Regulatory Service 7–145.2.

By order of the Board of Governors of the Federal Reserve System, December 16, 2002.

Jennifer J. Johnson,

Secretary of the Board

[FR Doc. 02–31930 Filed 12–18–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–03–22]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda M. Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Assessment of Methemoglobin Levels in Pregnancy—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

Methemoglobinemia as a consequence of ingestion of nitrate-contaminated water has been well established. Methemoglobinemia is an acute and potentially fatal illness, the severity of which depends on the amount of methemoglobin (metHb) formed. Subclinical increases in metHb levels can occur in people exposed to low levels of nitrate in drinking water; however, metHb levels in such people have not been well characterized. Furthermore, very little is known about metHb levels in pregnant women, including whether drinking low levels of nitrate (below the maximum allowable contaminant level of 10 mg/L) affects blood metHb levels in pregnant women or their fetuses. We propose to study 330 pregnant women who consume water from public and private wells. We plan to follow them from their first prenatal visit until 2 weeks after delivery, when we will also measure metHb levels in their newborn infants. The study objectives are to (1) measure metHb levels throughout pregnancy and evaluate how metHb levels change during and just after pregnancy; (2) measure metHb levels within a population of women and their newborn infants who are served by either public or private water supplies and are exposed to a range of nitrate levels primarily below the maximum contaminant level for public water supplies; (3) provide additional medical care, education, and advice to women whose metHb levels are elevated (above 5% of the total hemoglobin); and (4) to provide education and advice to women whose water supplies have elevated nitrate levels with regard to the potential hazards of infant methemoglobinemia. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Recruiting	428	1	15/60	107
Personal Interview	330	1	1	330
Biological Specimen Collection:				
Mother	330	6	45/60	1485
Infant	330	1	2/60	11
Total				1933

Dated: December 12, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–31927 Filed 12–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-03–23]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Minimum Data Elements (MDEs)/System for Technical Assistance Reporting (STAR) for the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) OMB No. 0920–0571—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

The NBCCEDP was established in response to the Congressional Breast and Cervical Cancer Mortality Prevention Act of 1990. This act mandates a program that will provide early detection of breast and cervical cancer screening services for under-served women.

CDC proposes to aggregate breast and cervical cancer screening, diagnostic and treatment data from NBCCEDP grantees at the state, territory and tribal level. These aggregated data will include demographic information about women served through funded programs. The proposed data collection will also include infrastructure data about grantee management, public education and outreach, professional education, and service delivery.

Breast cancer is a leading cause of cancer-related death among American women. The American Cancer Society estimates that 203,500 new cases will be diagnosed among women in 2002, and 39,600 women will die of this disease. Mammography is extremely valuable as an early detection tool because it can detect breast cancer well before the woman can feel the lump, when it is still in an early and more treatable stage. Women older than age 40 that receive annual mammography screening reduce their probability of breast cancer mortality and increase their treatment options.

Although early detection efforts have greatly decreased the incidence of invasive cervical cancer during the last four decades, an estimated 13,000 new cases will be diagnosed in 2002 and 4,100 women will die of this disease. Papanicolaou (Pap) tests effectively detect precancerous lesions in addition to invasive cervical cancer. The detection and treatment of precancerous lesions can prevent nearly all cervical cancer-related deaths.

Because breast and cervical cancer screening, diagnostic and treatment data are already collected and aggregated at the state, territory and tribal level, the additional burden on the grantees will be small. Implementation of this program will require grantees to report a minimum data set (MDE) on screening and follow-up activities electronically to the CDC on a semi-annual basis. The program will require grantees to report infrastructure data (STAR) to the CDC annually using a web-based system. Information collected will be used to obtain more complete breast and cervical cancer data, promote public education of cancer incidence and risk, improve the availability of screening and diagnostic services for under-served women, ensure the quality of services provided to women, and develop outreach strategies for women that are never or rarely screened for breast and cervical cancer. Data collection will continue for the next three years. There are no costs to respondents.

Reports	Number of respondents*	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
*Infrastructure Report (STAR)	71	1	25	1,775
*Screening and Follow-up (MDE)	71	2	4	568
Total				2,343

*Respondents include State, territorial and tribal grantees.

Dated: December 12, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–31928 Filed 12–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–11–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Reader Evaluations of Public Health Assessments and Other Products (OMB No. 0923–0016)—Reinstatement with change—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA) to perform health assessments for each facility on the National Priorities List and for releases or facilities where individuals have been exposed to a hazardous substance. In addition, ATSDR provides consultations on health issues relating to exposure to hazardous or toxic substances to officials at the Environmental Protection Agency (EPA), and state and local government. The principal audiences for these products are health professionals at the federal, state, and local levels, staff in public libraries and repositories, interested private sector organizations and groups, and members of the public.

In order to make ATSDR products such as health assessments, consultations, exposure investigations, and fact sheets timely and relevant, ATSDR staff developed a survey questionnaire (OMB No. 0923–0016) to get readers' opinions and evaluations. The survey will be inserted and mailed in each public health assessment. In addition, electronic surveys will be sent to clients and partners requesting ATSDR health consultations and exposure investigations within 1 month following delivery of product or service. The survey collects information on (a) Affiliation of users, (b) timeliness and

effectiveness of these products, and (c) practical utility of these products.

The reader evaluation surveys provide important feedback that enables ATSDR staff to maintain the utility, integrity and standards of its products. Gathering client feedback ensures that appropriate information is included in these documents and assists in maintaining medical and scientific usefulness. The information will be used to maintain customer satisfaction with these products. There is no cost to respondents.

Respondents	Number of respondents	Responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Community member reviewing public health assessments	130	1	15/60	32.5
Environmental regulatory official requesting health consultations	210	1	15/60	52.5
Community member requesting health consultations	50	1	15/60	12.5
Community member reviewing public health fact sheets	750	1	15/60	187.5
Total				285

Dated: November 27, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–31926 Filed 12–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10078]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with the Trade Act of 2002. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and public harm.

President Bush signed into law on August 6, 2002, the Trade Act of 2002. Additionally, the law provided funding of $20 million in Fiscal Year (FY) 2003 for seed grants to states to create high risk insurance pools and $80 million ($40 million in FY 2003 and $40 million in FY 2004) for matching grants to states for the operation of existing high risk pools. The provision in the legislation about high risk pools was unanticipated. (High risk pools are a mechanism for states to provide health coverage to individuals who cannot obtain health insurance in the private market because of a history of illnesses.)

In addition, public harm will result if funding to the states is delayed in any manner. The purpose of the grant program is to provide money to the states to expand the coverage in the high risk pools to make it available to more individuals. Any delay in the funding, therefore, would result in a delay in individuals obtaining health care for their illnesses. Because of this, the Bush Administration has instructed that this program to be enacted as quickly as possible.

CMS is requesting OMB review and approval of this collection by January 3, 2003, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by January 2, 2003. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New collection; *Title of Information Collection:* Matching Grants to States for the Operation of High Risk Pools; *Form No.:* CMS–10078 (OMB# 0938–XXXX); *Use:* HHS/CMS is requiring this information as a condition of eligibility for grants that were authorized in the Trade Act of 2002 (Pub. L. 107–210). The information is necessary to determine if a state applicant meets the necessary eligibility criteria for a grant as required by the law. The respondents will be states that have a high risk pool as defined in section 2744(c)(2) of the Public Health Service Act. The grants will provide matching funds to states that incur losses in the operation of high risk pools. High risk pools are set up by states to provide heatlh insurance to individuals that cannot obtain health insurance in the private market because of a history of illness; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 20; *Total Annual Responses:* 20; *Total Annual Hours:* 800.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp* or E-mail

your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by December 30, 2002.

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–3064. Attn: Julie Brown.

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167. Attn: Brenda Aguilar, CMS Desk Officer.

Dated: December 10, 2002.

John P. Burke, III,

CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–31923 Filed 12–18–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0496]

Agency Information Collection Activities; Proposed Collection; Comment Request; Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the labeling requirements for aluminum content in large volume parenterals (LVPs), small volume parenterals (SVPs), and pharmacy bulk packages (PBPs) used in total parental nutrition (TPN).

DATES: Submit written or electronic comments on the collection of information by February 18, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition—21 CFR 201.323 (OMB Control Number 0910–0439)—Extension

FDA is requesting OMB approval under the PRA for the labeling requirements for aluminum content in LVPs, SVPs, and PBPs used in TPN. As explained in the final rule on aluminum content labeling requirements published in the **Federal Register** of January 26, 2000 (65 FR 4103), aluminum content in parenteral drug products could result in a toxic accumulation of aluminum in the tissues of individuals receiving TPN therapy. Research indicates that neonates and patient populations with impaired kidney function may be at high risk of exposure to unsafe amounts of aluminum. Studies show that aluminum may accumulate in the bone, urine, and plasma of infants receiving TPN. Many drug products used routinely in parenteral therapy may contain levels of aluminum sufficiently high to cause clinical manifestations. Generally, when medication and nutrition are administered orally, the gastrointestinal tract acts as an efficient barrier to the absorption of aluminum, and relatively little ingested aluminum actually reaches body tissues. However, parenterally administered drug products containing aluminum bypass the protective mechanism of the gastrointestinal tract and aluminum circulates and is deposited in human tissues.

Aluminum toxicity is difficult to identify in infants because few reliable techniques are available to evaluate bone metabolism in premature infants. Techniques used to evaluate the effects of aluminum on bone in adults cannot be used in premature infants. Although aluminum toxicity is not commonly detected clinically, it can be serious in selected patient populations, such as neonates, and may be more common than is recognized.

FDA amended its regulations to add labeling requirements for aluminum content in LVPs, SVPs, and PBPs used in TPN. FDA specified an upper limit of aluminum permitted in LVPs and required applicants to submit to FDA validated assay methods for determining aluminum content in parenteral drug products. The agency added these requirements because of evidence linking the use of parenteral drug products containing aluminum to

morbidity and mortality among patients on TPN therapy, especially among premature neonates and patients with impaired kidney function.

The information collection reporting requirements resulting from this rulemaking are as follows:

21 CFR 201.323(b)—Requires that the package insert of all LVPs used in TPN therapy state that the drug product contains no more than 25 micrograms per liter (µg/L). This information must be contained in the ''Precautions'' section of the labeling of all LVPs used in TPN therapy.

21 CFR 201.323(c)—Requires that the maximum level of aluminum present at expiry be stated on the immediate container label of all SVP drug products and PBPs used in the preparation of TPN solutions. The aluminum content must be stated as prescribed in the regulation. The immediate container label of all SVP drug products and PBPs that are lyophilized powders used in the preparation of TPN solutions must contain the statement prescribed in the regulation.

21 CFR 201.323(d)—Requires that the package insert for all LVPs, SVPs, and PBPs used in TPN contain a warning statement, prescribed in the regulation, intended for patients with impaired kidney function and for neonates receiving TPN therapy. This information must be contained in the ''Warnings'' section of the labeling.

21 CFR 201.323(e)—Requires that applicants and manufacturers must use validated assay methods to determine the aluminum content in parenteral drug products. The assay methods must comply with current good manufacturing practice requirements. Applicants must submit to FDA both validation of the method used and release data for several batches. Manufacturers of parenteral drug products not subject to an approved application must make assay methodology available to FDA during inspections. Holders of pending applications must submit an amendment to the application.

Compliance with the information collection burdens under § 201.323(b), (c), and (d) (21 CFR 201.323(b), (c), and (d)) consists of submitting application supplements to FDA containing the revised labeling for each product. Based on data concerning the number of applications for LVPs, SVPs, and PBPs used in TPN received by the agency, FDA estimates that the labeling for approximately 200 products will be changed under § 201.323(b), (c), and (d). FDA estimates that it will take approximately 14 hours to prepare and submit to FDA each labeling change. FDA estimates that approximately 65 respondents will each submit one validated assay method annually under § 201.323(e). FDA estimates that it will take approximately 14 hours to prepare and submit to FDA each validated assay.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.323(b), (c), (d)	200	1	200	14	2,800
201.323(e)	65	1	65	14	910
Total					3,710

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 13, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–31995 Filed 12–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Tentative Schedule of Meetings for 2003

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 2003. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

FOR FURTHER INFORMATION CONTACT: Theresa Green, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**; FDA has implemented this recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Because the schedule is tentative, amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA advisory committees' Internet site located at http://www.fda.gov/oc/advisory/default.htm. The FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2003. You may also obtain up-to-date meeting information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area):

Committee Name	Dates of Meetings	Advisory Committee 5-Digit Information Line Code
OFFICE OF THE COMMISSIONER		
Science Board to the Food and Drug Administration	April 9, November 6	12603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	April 8, November 18	12388
Biological Response Modifiers Advisory Committee	February 27–28, June 9–10, October 9–10	12389
Blood Products Advisory Committee	March 13–14, June 19–20, September 18–19, December 11–12	19516
Transmissible Spongiform Encephalopathies Advisory Committee	February 20–21, July 17–18, October 30–31	12932
Vaccines and Related Biological Products Advisory Committee	February 20–21, May 8–9, September 22–23, November 19–20	12391
CENTER FOR DRUG EVALUATION AND RESEARCH		
Advisory Committee for Pharmaceutical Science	February 12–13, March 12–13, September 17, October 21–23	12539
Advisory Committee for Reproductive Health Drugs	March 24–25, August 18–19, November 13–14	12537
Anesthetic and Life Support Drugs Advisory Committee	June 26–27, December 11–12	12529
Anti-Infective Drugs Advisory Committee	January 8–9, March 4–5, June 10–11, October 15–16	12530
Antiviral Drugs Advisory Committee	April 29–30, September 19	12531
Arthritis Advisory Committee	January 30–31, September 5	12532
Cardiovascular and Renal Drugs Advisory Committee	January 6–7, May 29–30, September 15–16, December 11–12	12533
Dermatologic and Ophthalmic Drugs Advisory Committee	March 6–7, April 15–16, July 17–18, September 10–11	12534
Drug Safety and Risk Management Advisory Committee	April 24–25, September 18–19	12535
Endocrinologic and Metabolic Drugs Advisory Committee	January 13–15, June 12–13, September 11–12	12536
Gastrointestinal Drugs Advisory Committee	July 17	12538
Nonprescription Drugs Advisory Committee	March 6–7, June 13–14, September 16–17	12541

Committee Name	Dates of Meetings	Advisory Committee 5-Digit Information Line Code
Oncologic Drugs Advisory Committee	March 3–4, March 12–13, June 10–11	12542
Peripheral and Central Nervous System Drugs Advisory Committee	July 18	12543
Psychopharmacologic Drugs Advisory Committee	February 27–28, September 4–5	12544
Pulmonary-Allergy Drugs Advisory Committee	May 15–16, November 6–7	12545
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee	February 24–26, August 18–20	10564
Biotechnology Sub-Committee	March 24–25, October 15–16	10564
Dietary Supplements Sub-Committee	March 27–28, September 22–23	10564
Contaminants and Natural Toxicants Sub-Committee	March 6–7, September 4–5	10564
Nutrition Sub-Committee	April 28–29, November 3–4	10564
Food Additives Sub-Committee	June 19–20	10564
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	No meetings planned	12398
Medical Devices Advisory Committee:		
Anesthesiology and Respiratory Therapy Devices Panel	March 27–28, May 7–8, September 4–5, November 10–11	12624
Circulatory System Devices Panel	February 21–22, April 24–25, June 26–27, August 28–29, October 23–24, December 11–12	12625
Clinical Chemistry and Clinical Toxicology Devices Panel	February 10–11, May 19, September 8–9, December 11–12	12514
Dental Products Panel	February 13–14, May 22–23, August 7–8, October 9–10	12518
Ear, Nose, and Throat Devices Panel	April 8–9, June 2–3, August 4–5, October 9–10, December 4–5	12522
Gastroenterology and Urology Devices Panel	January 17, April 4, July 25, October 17	12523
General and Plastic Surgery Devices Panel	February 27–28, April 10–11, July 23–24, October 23–24	12519
General Hospital and Personal Use Devices Panel	February 27–28, May 15–16, August 18–19, November 20–21	12520

Committee Name	Dates of Meetings	Advisory Committee 5-Digit Information Line Code
Hematology and Pathology Devices Panel	March 14, June 20, October 3	12515
Immunology Devices Panel	March 17–18, June 9–10, September 15–16	12516
Medical Devices Dispute Resolution Panel	No meetings planned	10232
Microbiology Devices Panel	March 27–28, May 5–6, August 7–8, October 16–17	12517
Molecular and Clinical Genetics Panel	April 24–25, July 17–18, November 13–14	10231
Neurological Devices Panel	March 6–7, June 23–24, September 18–19, December 8–9	12513
Obstetrics and Gynecology Devices Panel	March 3–4, June 9–10, September 8–9, November 3–4	12524
Ophthalmic Devices Panel	March 13–14, May 22–23, July 10–11, September 11–12, November 6–7	12396
Orthopaedic and Rehabilitation Devices Panel	February 20–21, May 29–30, August 27–28, November 20–21	12521
Radiological Devices Panel	February 4, May 20, August 12, November 18	12526
National Mammography Quality Assurance Advisory Committee	April 7–8, September 8–9	12397
Technical Electronic Product Radiation Safety Standards Committee	June 18	12399
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	May 15, September 15	12548
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH		
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants	February 10–13, June 23–25	12560
Science Advisory Board to the National Center for Toxicological Research	June 3–5	12559

Dated: December 12, 2002.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 02–31994 Filed 12–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0127]

Determination That PHENERGAN (Promethazine Hydrochloride Injection USP) 25 Milligrams/Milliliter, 10 Milliliters, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that PHENERGAN (promethazine hydrochloride (HCl) injection USP) 25 milligrams (mg)/milliliter (mL), 10 mL, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for promethazine HCl injection USP 25 mg/mL, 10 mL.

FOR FURTHER INFORMATION CONTACT: Nicole Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

PHENERGAN (promethazine HCl injection USP) 25 mg/mL, 10 mL, is the subject of approved NDA 08–857 held by Wyeth Pharmaceuticals, a division of Wyeth. PHENERGAN (promethazine HCl injection USP) 25 mg/mL, 10 mL, is indicated for certain types of allergic reactions and sedation. In a citizen petition dated March 25, 2002 (Docket No. 02P–0127), submitted under § 314.161 and 21 CFR 10.30, PharmaForce, Inc., requested that the agency determine whether PHENERGAN (promethazine HCl injection USP) 25 mg/mL, 10 mL, was withdrawn from sale for reasons of safety or effectiveness. The petitioner seeks this determination in preparation for filing an ANDA for promethazine HCl injection USP 25 mg/mL, 10 mL.

The agency has determined that Wyeth's PHENERGAN (promethazine HCl injection USP) 25 mg/mL, 10 mL, was not withdrawn from sale for reasons of safety or effectiveness. In support of this finding, we note that Wyeth continues to market PHENERGAN for injection in 25 mg/mL and 50 mg/mL, 1-mL vials. The 25 mg/mL, 10 mL product is a multidose vial consisting of the same drug as the 25 mg/mL and 50 mg/mL, 1-mL vials. Also, promethazine HCl is a widely used product that has been marketed for many decades in many dosage forms. Although one potential concern with any multidose injectable product is the possibility of accidental overdose, there is no evidence that the withdrawal from the market of PHENERGAN (promethazine HCl injection) 25 mg/mL, 10 mL, was in any way connected to accidental overdose. FDA has independently evaluated relevant literature and data for adverse event reports and has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined previously, Wyeth's PHENERGAN (promethazine HCl injection USP) 25 mg/mL, 10 mL, was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list PHENERGAN (promethazine HCl injection USP) 25 mg/mL, 10 mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to PHENERGAN (promethazine HCl injection USP) 25 mg/mL, 10 mL, may be approved by the agency.

Dated: December 8, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–31910 Filed 12–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0289]

Medical Devices; Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' This guidance will serve as a special control for the absorbable polydioxanone surgical (PDS) suture which is being reclassified from class III to class II (special controls) elsewhere in this issue of the **Federal Register**. This guidance document is immediately in effect as the special control for the absorbable PDS suture, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

Also, elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to amend eight other surgical suture device classification regulations in order to designate this guidance as the special control for each such device. After public comments are reviewed, FDA intends to issue a final rule for the eight other surgical sutures and make this guidance effective as the special control guidance for those sutures in addition to the PDS suture, for a total of nine suture types. This guidance is not final nor is it in effect at this time for the eight surgical sutures for which it is being proposed as a special control.

DATES: Submit written or electronic comments concerning this guidance by March 19, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the draft guidance document entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Anthony D. Watson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document describes a means by which surgical suture devices may comply with the requirement of special controls for class II devices. Designation of this guidance document as a special control means that a manufacturer attempting to establish that its device is substantially equivalent to a predicate class II surgical suture should demonstrate that the proposed device complies with either the specific recommendations of this guidance or some alternate control that provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA,'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1387) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E were approved under OMB control number 0910–0120.

V. Comments

You may submit to Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance by March 19, 2003. You should submit two copies of any comments. Individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this document. The guidance document and comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 16, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–31992 Filed 12–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Pulmonary-Allergy Drugs Advisory Committee scheduled for December 20, 2002. This meeting was announced in the **Federal Register** of November 13, 2002 (67 FR 68878).

FOR FURTHER INFORMATION CONTACT: Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, or e-mail: topperk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12545.

Dated: December 16, 2002.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 02–32157 Filed 12–17–02; 3:05 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Faculty Loan Repayment Program (FLRP)

Application (OMB No. 0915–0150)—Revision

Under the Health Resources and Services Administration Faculty Loan Repayment Program, disadvantaged graduates from certain health professions may enter into a contract under which HRSA will make payments on eligible educational loans in exchange for a minimum of two years of service as a full-time or part-time faculty member of an accredited health professions school. Applicants must complete an application and provide current loan balances on all eligible educational loans.

The estimated burden hours for the form is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Applicants	94	1	94	1	94

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 12, 2002.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–31911 Filed 12–18–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Uncompensated Services Assurance Report (OMB No. 0915–0077)—Revision

Under the Hill-Burton Act, the Government provides grants and loans for construction or renovation of health care facilities. As a condition of receiving this construction assistance, facilities are required to provide services to persons unable to pay. A condition of receiving this assistance requires facilities to provide assurances periodically that the required level of uncompensated care is being provided, and that certain notification and record keeping procedures are being followed. These requirements are referred to as the uncompensated services assurance.

Estimate of Information Collection Burden

Type of requirement and regulatory citation	Number of Responses	Responses per respondent	Total responses	Hours per response	Total hour burden
Disclosure Burden (42 CFR)					
Published Notices (124.504(c))	206	1	206	0.17	35
Individual Notices (124.504(c))	206	1	206	35.5	7,313
Determinations of Eligibility (124.507)	206	396	81,576	0.37	30,183
Subtotal Disclosure Burden					37,531

Type of requirement and regulatory citation	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Reporting					
Uncompensated Services Report—HRSA–710 Form (124.509(a))	10	1	10	11.0	110
Application for Compliance Alternatives:					
Public Facilities (124.513)	4	1	4	6.0	24
Small Obligation Facilities (124.514(c))	0				
Charitable Facilities (124.516(c))	2	1	2	6.0	12
Annual Certification for Compliance Alternatives:					
Public Facilities (124.509(b))	144	1	144	0.5	72
Charitable Facilities (124.509(b))	28	1	28	0.5	14
Small Obligation Facilities (124.509(c))	1	1	1	0.5	1
Complaint Information (124.511(a)):					
Individuals	10	1	10	0.25	3
Facilities	10	1	10	0.5	5
Subtotal Reporting Burden					241

Recordkeeping	Number of Recordkeepers	Hours per year	Total hour burden
Non-alternative Facilities (124.510(a))	206	50	10,300
Subtotal Recordkeeping Burden			10,300

The total burden for this project is estimated to be 48,072 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–31929 Filed 12–18–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indian Health Service Contract Health Service Report

AGENCY: Indian Health Service, HHS.

ACTION: Request for Public Comment: 60-day Proposed Collection: Indian Health Service Contract Health Service Report.

SUMMARY: The Indian Health Service (IHS) as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the IHS is providing a 60-day advance opportunity for public comment on a proposed extension of current information collection activity to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection

Title: 09–17–0002, ''IHS Contract Health Service Report''.

Type of Information Collection Request: Extension of a currently approved collection.

Form Number: IHS–843–1A, ''Purchase-Delivery Order for Health Services.''

Need and Use of Information Collection: The Contract Health Service health care providers complete form IHS–843–1A to certify that they have performed the health services authorized by the IHS. The information is used to manage, administer, and plan for the provision of health services to eligible American Indian patients, process payments to providers, obtain program data, provide program statistics, and, serves as a legal document for health care services rendered.

Affected Public: Businesses or other for-profit, individuals, not-for-profit institutions and State, local or Tribal government.

Type of Respondents: Health care providers.

The table below provides the type(s) of data collection instruments, estimated number of respondents, number of responses per respondent, average burden hour per response, and total annual burden hour.

Data collection instrument	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hr per response*	Total annual burden hours
IHS–843–1A	7,399	42	310,758	3 minutes	15,538
IDS**	16,356	1	16,356	3 minutes	818

* For ease of understanding, the burden is provided in actual minutes.
** Inpatient Discharge Summary (IDS)

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested (information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the IHS's requests to OMB for renewal of this collection. All comments will become a matter of public record.

ADDRESSES: Mail, fax or E-mail all written comments to Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, fax (301) 443–2316, or E-mail to: *lhodahkw@.hqe.ihs.gov.*]

FOR FURTHER INFORMATION CONTACT: Requests for additional information on the proposed project or for copies of the data collection instruments and instructions should be directed to Carol Littlefield, (301) 443–2694, or through the Internet (*clittlef@hqe.ihs.gov*). Indian Health Service, Rey

COMMENT DUE DATE: Your comments are best assured of having their full effect if received on or before February 18, 2003.

Dated: December 12, 2002.

Charles W. Grim,

Assistant Surgeon General, Interim Director.

[FR Doc. 02–31912 Filed 12–18–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–49]

Notice of Proposed Information Collection: Comment Request; Applications for Housing Assistance Payments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a tollfree number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Applications for Housing Assistance Payments.

OMB Control Number, if applicable: 2502–0182.

Description of the need for the information and proposed use: Vouchers are submitted by owners/agents to HUD or their Contract Administrators (CA)/Performance Based Contract Administrators (PBCA) each month to receive assistance payments for the difference between the gross rent and the total tenant payment for all assisted tenants. In the instance of special claims, vouchers are submitted by owners/agents to HUD or their CA/PBCA to receive an amount of offset unpaid rents, tenant damages, vacancies, and/or debt service losses.

Agency form numbers, if applicable: HUD–52670; HUD–52670A, Part 1; HUD–52670A, Part 2; HUD–52671A/B/C/D.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 178,585; the number of respondents is 43,064 generating approximately 394,821 annual responses; the frequency of response is on occasion and monthly; and the estimated time needed to prepare the response varies from 20 to 30 minutes.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 22, 2002

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–31908 Filed 12–18–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–077–03–1430–ER–D025; IDI–33676]

Notice of Intent To Prepare an Environmental Impact Statement/Land Use Plan Amendment

AGENCY: Burley Field Office, Upper Snake River District, Bureau of Land Management (BLM), Cassia County, Idaho.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) and to Amend the Cassia Resource Management Plan (RMP).

SUMMARY: Notice is hereby given that the BLM is proposing to prepare a land use plan amendment and environmental impact statement (EIS) to consider the proposed Cotterel Mountain Wind Energy Project (Project), located southeast of the town of Albion in Cassia County, Idaho. Windland, Inc. (Windland) of Boise, Idaho proposes to construct and operate the 200-megawatt (MW) wind-driven power generation facility. The EIS will analyze the potential environmental impacts of the construction and operation of the wind project itself, as well as related transmission facilities and roads. This planning activity would amend the Cassia RMP and deals with the 40,967 acres of public land in the Cotterel Mountain Management Area of the RMP and more specifically with approximately 4,600 acres running north and south along the ridge line of the mountain that would be directly affected by the proposed project. The planning process will comply with the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Environmental Policy Act of 1969 (NEPA). The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. This notice initiates the public scoping process to identify specific issues and develop planning criteria. The scoping process will include an evaluation of the needs and interests of the public.

DATES: The scoping comment period will commence with the publication of this notice. Formal scoping will end 60 days after publication of this notice. Comments regarding issues and planning criteria should be received on or before the end of the scoping period at the address listed below. Public meetings or open houses will be held. In order to ensure local community

participation and input, public meetings will most likely be held in Albion, Burley and Boise, Idaho. Specific dates and locations for public participation will be published in local newspapers and broadcast on local community calendars. Meetings and open houses will provide opportunity for the public to work collaboratively with the BLM to identify issues to be addressed in the planning process.

ADDRESSES: Comments regarding the proposed development of a wind-driven power generation facility should be sent to: Project Manager, Cotterel Mountain Wind Project, Bureau of Land Management, Burley Field Office, 15 East 200 South, Burley, Idaho 83318. Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: Windland, Inc., a Boise based company, is proposing to install approximately 130 wind turbines, each having a generating capacity between 1.3 and 1.8 megawatts, on a site covering approximately 7 square miles on the Cotterel Mountains southeast of Burley, Idaho. The proposed project area is within the Burley Field Office, Upper Snake River District of the BLM. The 130 turbines situated on towers approximately 250 feet in height would produce a maximum of 200 megawatts of power, enough to provide electricity for 40,000 homes. Power from the project would be collected by an underground cable system and then fed into one of two proposed substations to be located on the project site. The fenced substation sites would occupy approximately two to four acres each. From the substation sites, power from the project would then be transported to one of two existing 138-kilovolt (kV) power transmission lines that are in the vicinity of the proposed project area, via new overhead transmission facilities. Other facilities required as part of the proposed project are small pad mounted transformers located at the base of each wind turbine tower, access roads and one operation and maintenance building. The area permanently occupied by the project after final reclamation of disturbed areas would total approximately 68 acres. The project is scheduled to begin construction as early as June 2004, followed by commercial operation as early as November 2005 and would operate year-round for at least 30 years.

The purpose and need for the proposed project are to (1) provide wind-generated electricity from a site in Idaho to meet existing and future demands for electricity; and (2) to develop energy generation facilities that are consistent with the President's National Energy Policy which encourages the development of renewable energy resources, including wind energy, as part of an overall strategy to develop a diverse portfolio of domestic energy supplies for the nation's future.

Public Participation: Potential issues that have been identified to date include, but are not limited to the following general categories: Wildlife (including birds); vegetation (including weeds and invasive plant species); threatened, endangered and sensitive species; public access; visual concerns; cultural resources; Tribal concerns; rangeland resources; geology and soils; hydrology; recreation resources; hazardous materials; air quality; noise; and socio-economics. The BLM has established a 60-day scoping period during which, affected tribes, landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the EIS. Scoping will help the BLM identify the full range of issues that should be addressed in the EIS. The Draft EIS/Draft plan amendment, which is scheduled for completion in the fall of 2003, will be circulated for public review and comment. The BLM will consider and respond in the Final EIS/proposed planned amendment to comments received on the draft. The Final EIS and proposed plan amendment are expected to be published early in 2004.

FOR FURTHER INFORMATION CONTACT: Scott Barker, Project Manager, Burley Field Office, 15 East 200 South, Burley, Idaho 83318, telephone (208) 677–6678.

Dated: October 28, 2002.

Theresa Hanley,

Burley Field Office Manager.

[FR Doc. 02–32060 Filed 12–18–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*), the Bureau of Reclamation (we, our, or us) has forwarded a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Crop Acreage and Yields and Water Distribution (Water User Crop Census Report [Form 7–332], and Crop and Water Data [Form 7–2045]), OMB Control Number: 1006–0001. We request your comments on the revised Crop Acreage and Yields and Water Distribution Forms and specific aspects of the information collection.

DATES: Your written comments must be received on or before January 21, 2003.

ADDRESSES: Send comments regarding the information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. A copy of your comments should also be sent to Ms. Diana Trujillo, Bureau of Reclamation, Water Resources Office, D–5300, PO Box 25007, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: For further information or for a copy of the forms contact Diana Trujillo, Bureau of Reclamation, (303) 445–2914.

SUPPLEMENTARY INFORMATION: This is notice that a request for review, comment, and approval of a revised currently approved collection has been forwarded to OMB. A **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 17, 2002 (67 FR 46998). No public comments were received by Reclamation.

We have revised the currently approved collection to reflect industry standards concerning units used to measure yields for certain crops (*i.e.*, using pounds instead of bales for cotton lint and using pounds instead of tons for hops). Other changes include:

• In Section II–e on both forms, ''Acres irrigated by'', we are adding the option to choose ''Flood'' along with the

current options of ''Sprinkler'' and ''Drip''.

• In Section II–g on both forms, ''Acres not irrigated'', we are adjusting the format of the box to allow checkmark indications for the options of ''dry cropped'', ''fallow'', and ''idle'', in addition to the number of acres.

• Within each subsection (*i.e.*, Cereals, Forage, Vegetables, etc.) in Section III on both forms, ''Crop Production'', we are placing the items in alphabetical order.

• In Section III on both forms, we are moving ''Cantaloupe'', ''Watermelon'', and ''Honey Ball, Honeydew, etc.'' from the ''Vegetables'' subsection to the ''Fruits'' subsection.

• In Section I on Form 7–332, ''Irrigator Information'', we are including a box that asks for the respondent's telephone number so any potential questions may be directed to that person.

• We are removing the footnotes to both forms and incorporating the footnotes within the body of the instructions that accompany each form.

There have been editorial changes to the current Form 7–332 and Form 7–2045, and to the instructions that accompany these forms. These changes have been made to increase the respondents' understanding of the forms and understanding of the instructions to the forms. The proposed changes will be included starting with the 2003 Crop Acreage and Yields and Water Distribution information collection.

Title: Crop Acreage and Yields and Water Distribution.

Forms: Form 7–332, Water User Crop Census Report; and Form 7–2045, Crop and Water Data.

Abstract: The annual crop census is taken on all Bureau of Reclamation projects, along with collection of related statistics, primarily for use as a tool in administering, managing, and evaluating the Federal Reclamation program. The census is used to assist in the administration of repayment and water service contracts, which are used to repay the irrigators' obligation to the Federal Government. The census will provide data to facilitate the required 5-year review of ability-to-pay analysis, which is being incorporated into new repayment and water service contracts. The basis for these reviews is an audit by the Office of the Inspector General, Department of the Interior.

Data from the census are utilized to determine class 1 equivalency factors, *i.e.*, the number of acres of class 2 and class 3 land that are required to be equivalent in productivity to class 1 land.

In recent years, the census has provided data which are used to administer international trade agreements, such as the North American Free Trade Agreement. Data from the census are also used by the Office of the Inspector General, General Accounting Office, and the Congressional Research Service to independently evaluate our program and to estimate the impacts of proposed legislation. These data are supplied to other Federal and State agencies to evaluate the program and provide data for research.

Description of Respondents: Irrigators and water user entities in the 17 Western States who receive irrigation water service from Bureau of Reclamation facilities. Also included are entities who receive other water services, such as municipal and industrial water through Bureau of Reclamation facilities.

Frequency of Collection: Annually.

Estimated completion time: Form 7–332, 15 minutes; Form 7–2045, 480 minutes.

Annual responses: Form 7–332, 25,000 responses; Form 7–2045, 225 responses.

Annual burden hours per form: Form 7–332, 6,250; Form 7–2045, 1,800.

Total Annual burden hours: 8,050.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Reclamation, including whether the information will have practical utility; (b) the accuracy of our burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including increased use of automated collection techniques or other forms of information technology.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: November 12, 2002.

Wayne Deason,

Associate Director, Office of Policy.

[FR Doc. 02–31925 Filed 12–18–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–753–756 (Review)]

Cut-to-Length Carbon Steel Plate From China, Russia, South Africa, and Ukraine

AGENCY: International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on cut-to-length carbon steel plate from China, Russia, South Africa, and Ukraine.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on cut-to-length carbon steel plate from China, Russia, South Africa, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for

these reviews may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION: On December 9, 2002, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (67 FR 56311, September 3, 2002) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: December 16, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–31987 Filed 12–18–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: International Trade Commission.

ACTION: Notice of determination.

EFFECTIVE DATE: December 13, 2002.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act, as amended (19 U.S.C. 2703 note), which concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries, requires the Commission to determine annually the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market determination made by the Commission is to be used to establish the ''base quantity'' of imports that can be imported with a zero percent local feedstock requirement. The base quantity to be used by the U.S. Customs Service in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For the 12-month period ending September 30, 2002, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 1.89 billion gallons. Seven percent of this amount is 132.5 million gallons (these figures have been rounded). Therefore, the base quantity for 2003 should be 132.5 million gallons.

FOR FURTHER INFORMATION CONTACT: Jonathan Coleman (202) 205–3465, *jcoleman@usitc.gov,* in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart, *wgearhart@usitc.gov,* in the Commission's Office of the General Counsel at (202) 205–3091.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Background: For purposes of making determinations of the U.S. market for fuel ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Department of Energy to make these determinations as well as the PIERS database of the Journal of Commerce, which is based on U.S. export declarations.

Section 225 of the Customs and Trade Act of 1990 (Public Law 101–382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. The amendment requires the Commission to make a determination of the U.S. domestic market for fuel ethyl alcohol for each year after 1989.

By order of the Commission.

Issued: December 16, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–31986 Filed 12–18–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Oil Pollution Act (OPA)

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America and the State of Maryland* v. *Potomac Electric Power Company, Support Terminals Operation Partnership, L.P. and Support Terminal Services, Inc.,* Civil Action No. AW 02–4013, was lodged with the United States District Court for the District of Maryland on December 11, 2002.

The Consent Decree resolves claims under the Oil Pollution Act of 1990, 33 U.S.C. 2701–2761 brought against Potomac Electric Power Company, Support Terminals Operating Partnership, L.P., and Support Terminal Services, Inc. collectively, (''Defendants''), for natural resource damages arising from the April 7, 2000 spill of oil from the rupture in an oil pipeline at Chalk Point Generating Station near Aquasco, Maryland.

The proposed Consent Decree requires the Defendants to pay approximately $2,700,000 in natural resource damages and approximately $318,000 for remaining unpaid damage assessment costs. The Consent Decree includes a covenant not to sue by the United States and State of Maryland under the Oil Pollution Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Each communication should refer to *United States, et al.* v. *Potomac Electric Power Co., et al.*

The Consent Decree may be examined at the Office of the United States Attorney, District of Maryland, 101 W. Lombard Street, Suite 6625, Baltimore, Maryland, 21201. A copy of the proposed Consent Decree may be obtained by (1) mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044 7611; or by (2) faxing the request to Tonia Fleetwood, U.S. Department of Justice, fax number (202) 514–0097; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $7.00 (25 cents per page reproduction cost), made payable to the U.S. Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–31913 Filed 12–18–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the policy of the Department of Justice, notice is hereby given that a proposed consent decree in *United States* v. *Western Processing Co., et al.*, Civ. Nos. C83–252M and C89–214M, was lodged with the United States District Court for the Western District of Washington, on November 25, 2002. That action was brought against defendants pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for payment of past response costs incurred, and future response costs to be incurred, by the United States and the State of Washington at the Western Processing Superfund Site in Kent, Washington. (The site is being cleaned up and most past costs have already been recovered pursuant to several prior settlements.) This decree requires Union Oil Company of California (d/b/a Unocal) (''Unocal'') and RSR Corporation (RSR) to pay: (1) $474,447.16 to the United States, which represents 95% of the remaining United States'' past response costs at this site incurred from January 1, 1997 through June 30, 1998 (including interest); (2) $100,000 to the State of Washington for its past response costs; and (3) 95% of all response costs incurred by the United States and the State at the site after June 30, 1998 (upon being billed for such costs).

Five minor generators of hazardous substance are paying RSR and Unocal a total of $450,000 to resolve their liability for past and future response costs at the site. Finally, the United States, on behalf of the Air Force, Army, Coast Guard, and Navy, will pay RSR and Unocal $118,000 to resolve any remaining liability it may have at the site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Western Processing Co., et al.,* D.J. Ref. 90–7–1–233.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Washington, 3600 Seafirst 5th Avenue Plaza, 800 5th Avenue, Seattle, Washington 98104; and at the Region X office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $14.75 (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Western Processing Co., et al.,* D.J. Ref. 90–7–1–233.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–31914 Filed 12–18–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket Nos. 01–12; 01–13]

Indace, Inc., c/o Seegott, Inc.; Malladi, Inc. Suspension of Shipments

On January 25, 2001, the then-Administrator of the Drug Enforcement Administration (DEA) issued an Order to Suspend Shipment to Indace, Inc. c/o Seegott, Inc. (Indace) of Elgin, Illinois, notifying it that pursuant to 21 U.S.C. 971, DEA had ordered the suspension of a shipment of 3,000 kilograms of ephedrine hydrochloride, a listed chemical, from India into the United States. Indace indicated in its request for importation that the listed chemical was intended for further shipment to PDK Laboratories, Inc. (PDK) of Hauppage, New York. The Order to Suspend Shipment stated that DEA concluded that the listed chemical may be diverted to the clandestine manufacture of a controlled substance based on the appearance of products manufactured from imports of ephedrine and pseudoephedrine destined for PDK at illicit manufacturing sites.

On January 26, 2001, the then-Administrator of the Drug Enforcement Administration (DEA) issued an Order to Suspend Shipment to Malladi, Inc., (Malladi) of Edison, New Jersey, notifying it that pursuant to 21 U.S.C. 971, DEA had ordered the suspension of a shipment of 3,000 kilograms of ephedrine hydrochloride, a listed chemical, from India into the United States. Malladi indicated in its request for importation that the listed chemical was intended for further shipment to PDK laboratories, Inc. (PDK) of Hauppage, New York. The Order to Suspend Shipment stated that DEA concluded that the listed chemical may be diverted to the clandestine manufacture of a controlled substance based on the appearance of products manufactured from prior imports of ephedrine and pseudoephedrine destined for PDK at illicit manufacturing sites.

On February 8, 2001, PDK requested a hearing in both matters, asserting standing as a Respondent pursuant to a ruling in *PDK Laboratories Inc.* v. *Reno, et al.,* 134 F.Supp.2d24 (D.D.C. 2001). DEA complied with the court's ruling, and both matters were docketed before Administrative Law Judge (ALJ) Gail A. Randall.

On March 8, 2001, the ALJ issued an order consolidating both matters for hearing purposes. Neither Indace nor Malladi requested a hearing in these matters. Following prehearing procedures, a hearing was held in Arlington, Virginia on March 26–30, April 5–6, April 11–13, and April 16–17, 2001. At the hearing, PDK and the Government called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law, and argument.

On April 5, 2002, the ALJ issued a consolidated Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge recommending that both the suspensions be lifted, and the importers be allowed to complete the shipments. On April 25, 2002, the Government filed Exceptions to the ALJ's Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision. In response, on May 21, 2002, PDK filed PDK's Response to the Exceptions Filed by the Government. Subsequently, on June 5, 2002, the ALJ transmitted the record of these proceedings as her report to the Deputy Administrator for final action pursuant 5o 21 CFR 1313.57.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1313.57, hereby issues his final order regarding the Indace and Malladi suspensions of shipments based upon findings of fact and conclusions of law hereinafter set forth. The Deputy Administrator is issuing one final order regarding both suspension cases since the same findings of fact and conclusions of law apply to both suspensions. Except as hereafter noted, the Deputy Administrator rejects, in its entirely, the Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

(hereinafter ''Recommendation''). Based on his review of the record in this matter, including all submissions of both parties, and Exceptions as filed, the Deputy Administrator adopts such findings of fact and conclusions of law as hereinafter follow.

The Deputy Administrator finds that both Indace and Malladi are registered with the DEA as importers of listed chemicals. Both importers were advised in the Orders to Suspend Shipment of their right to request a hearing. Neither importer chose to do so. Furthermore, the record reflects that the ALJ gave Indace an opportunity to participate in prehearing matters, but Indace did not respond. Accordingly, the Deputy Administrator concludes that both Indace and Malladi have waived their right to a hearing pursuant to 21 CFR 1313.54.

A significant issue that must await future consideration by the Deputy Administrator is whether a party in PDK's position (*i.e.* a wholesale distributor/manufacturer who receives bulk listed chemicals from an importer) is in fact ''a regulated person to whom an order applies under paragraph (1)'' of 21 U.S.C. 971(c)(2) entitled to a hearing. In PDK *Laboratories Inc.* v. *Reno, et al.,* 134 F. Supp. 2d 24 (D.D.C. 2001), the court found, in reference to this processing, that PDK was ''a regulated person to whom an order applies under 21 U.S.C. 971(c)(2) with respect to the suspension of List I chemicals to be imported on PDK's behalf.'' The United States District Court for the District of Columbia has created a rule for this case; however, the Deputy Administrator declines at this time to adopt the rule as DEA policy.

On January 25 and 26, 2001, DEA issued the Orders to Suspend Shipment to Indace and Malladi that are the subject of this proceedings. The Orders asserted as a basis for the suspensions that the ephedrine to be imported may be diverted to the illicit production of a controlled substance. The issue before the Deputy Administrator is whether or not the record as a whole establishes by a preponderance of the evidence that DEA should suspend the two shipments of ephedrine hydrochoride destined to be shipped from India to the United States, pursuant to 21 U.S.C. 971 (c)(1) and 21 CFR 1313.41(a).

The Deputy Administrator notes that the DEA Orders to Suspend Shipment recited that a DEA investigation revealed that products produced from prior imports of ephedrine and pseudoephedrine destined for PDK has appeared as clandestine methamphetamine laboratories in the United States. The Orders also indicated that traffickers utilize ephedrine and pseudoephedrine in the illicit production of methamphetamine, that PDK manufacturers and distributes over-the-counter drug products containing the listed chemicals pseudoephedrine and ephedrine, that these PDK products are distributed in strength, quantity and packaging unlike the traditional market (referred to by DEA as ''gray market'' products), and that these products are generally distributed and sold through non-traditional retail outlets. The Orders to Suspend Shipment also indicated that DEA data regarding clandestine laboratory seizures noted that gray market products are prodominantly encountered in larger clandestine methamphetamine laboratories.

In her Recommendation, the ALJ interpreted the terms ''listed chemical'' and the ''the chemical'' as set forth in 21 U.S.C. 971(c)(1) (hereafter ''971''), to be limited to the actual material to be imported, in this case, bulk ephedrine hydrochloride, as opposed to the products PDK manufactured from bulk ephedrine. The Deputy Administrator rejects this conclusion, and concurs with the following reasoning proposed by the Government.

The Government argues that the terms ''listed chemical'' as set forth in 971(a) and (c)(1) and ''regulated transaction'' in 971 (c)(1) must be construed in light of 21 U.S.C. 802(39)(A) and 21 U.S.C. 802(39)(A)(iv)(aa) regarding ''regulated transactions.'' While 802(39)(A)(iv) excludes FDA drug products generally from being included in ''regulated transactions,'' 802(39)(A)(iv)(I)(aa) explictly includes in the definition of ''regulated transaction'' any ''drug [that contains ephedrine or its salts, optical isomers, or salts of optical isomers[.]'' After 971 was made law in 1988, Congress in 1993 amended 21 U.S.C. 802(39)(A)(iv) to include, inter alia, ephedrine drug products under 802(39)(A)(iv)(I)(aa). Thus a ''regulated transaction'' includes any ephedrine drug product as a ''listed chemical.'' See also Section 401(f) of Pub. L. 104–237 set forth in the Historical and Statutory Notes to 21 U.S.C. 802.

The ALJ cites three prior DEA cases in support of her statutory interpretation of the term ''listed chemical:'' Suspension of Shipment Cases, 65 FR 51,333 (2002); Yi Heng Enters. Dev. Co., 64 Fed. Reg. 2,234 (1999); and Neil Laboratories, Inc. 64 FR 30,063 (1999). The Deputy Administrator finds these cases distinguishable in that none of the cases involve or discuss the same issue of chemical identity addressed in this case.

The Deputy Administrator finds additional support for the Government's position in United States v. Abdul Daas, 198 F.3d 1167, 1175 (9th Cir. 1999), cert. denied, 531 U.S. 999 (2002). The court in Daas found that the term ''listed chemical'' as used in 21 U.S.C. 841(d)(2) (now 841(c)(2)) and defined at 21 U.S.C. 802 (34) included finished List I chemical products that contain other ingredients. The Daas court stated: ''The chemical matrix in which ephedrine and pseudoephedrine are contained is irrelevant because they do not disappear, become different chemicals, or become useless when combined with other substances to make [finished products]. For the purposes of § 841(d)(2), the other ingredients * * * function solely as a carrier medium or packaging material facilitating distribution of the listed chemical.'' Id. at 1175. The court concluded that ''the plain meaning of 'listed chemical' encompasses the ephedrine and pseudoephedrine contained in [finished products].'' Id. The Deputy Administrator finds this analysis equally applicable to the instant case.

The Deputy Administrator has also considered the legislative history of the Domestic Chemical Diversion Control Act of 1993 (DCDCA), Public Law 103–200, § 9, 107 Stat. 2333 (1993). The then-acting DEA Administrator made a report to the House Committee clearly indicating that this legislation was intended, in part, to close the ''loophole'' for those who divert ephedrine drug products. H.R. Rep. 103–3791 at 5, 8 (1993), reprinted in U.S.C.C.A.N. 2983, 2986 (1993).

Accordingly, the ALJ's interpretation of ''listed chemical'' and ''the chemical,'' as those terms appear in 971(a) and (c), is hereby rejected. The Deputy Administrator finds that the application of 971 is not limited to the imported form of the listed chemical. The Deputy Administrator concludes that the provisions of 971 apply to regulated transactions involving listed chemicals regardless of imported or exported form, *i.e.* bulk or finished products. The Deputy Administrator further concludes the provisions of 971 apply to finished products subsequently manufactured from bulk imported list chemicals.

The ALJ also disagreed with the Government's interpretation of 971(c), finding that it would create a form of ''strict liability'' for the importers in this case. As mentioned previously, although the suspension was directed against the importers, the party in interest in this proceeding is the manufacturer-customer of the importer. It is the conduct of that party, PDK, and

its customers, and the fact that the product which it manufactured and distributed ended up in clandestine drug laboratories, that forms the basis of the Government's contention that the ephedrine imported ''may be diverted.'' The Deputy Administrator concluded in the case of Mediplas Innovations, 67 FR 41256 (2002), published subsequent to the ALJ's recommendation in the instant case, that whether a regulated person foresaw or knew of diversion was not a determining factor as to whether the listed chemical ''may be diverted.'' While knowledge of regulated person, or its party in interest customer, may be relevant in a totality of the circumstances analysis, the ultimate issue is whether the listed chemical being imported into the United States ''may be diverted.'' The focus of the inquiry is the ultimate destination of the listed chemical, not the culpability of the regulated person.

The Deputy Administrator concluded in Mediplas that the test for whether § 971(c) suspension orders are justified is ''whether the totality of the circumstances provides grounds to believe that the suspended chemical shipments may be diverted.'' Id. at 41262. In the instant case, the Deputy Administrator concludes that the totality of the circumstances supports the conclusion that the listed chemicals in the suspended chemical shipments may be diverted.

The DEA Orders to Suspend Shipment list various facts in support of the suspensions. The Orders to Suspend Shipment refer to four occasions during 1994–95, when PDK apparently shipped 25 mg. ephedrine tablets to a mail order distributor in Ontario, Canada without filing an export notification with DEA as required by 21 U.S.C. 971(a). In 1995, PDK made multiple shipments of ephedrine in response to mail order requests by individuals. In periods ranging from one to nine months, these individuals purchased 14,000 to 32,000 tablets of ephedrine. The Orders further allege that PDK failed to make reports of transactions of extraordinary quantities of listed chemicals, and that three individuals who purchased thousands of dosage units of ephedrine from PDK by mail order were convicted of methamphetamine manufacturing offenses. The Orders also state that in 1997, PDK was issued a Warning Letter by DEA stating that approximately 51 methamphetamine laboratory-related sites were found to contain evidence of PDK products, and that in 1998–99, approximately 49 methamphetamine laboratory-related sites were found to contain evidence of PDK products. Finally, the orders stated that from February 2000 through January 2001, DEA issued 22 Warning Letters notifying PDK that its products had been found at over 40 different clandestine methamphetamine laboratory-related sites in several states.

These recitations were relied upon by the Government to support its finding that pursuant to 971(c) the ephedrine proposed to be imported may be diverted for the illicit production of a controlled substance. The Government contends that evidence supporting these recitations would be sufficient to show that the listed chemicals may be diverted.

The Deputy Administrator finds that based upon the evidence in the record, the listed chemicals ephedrine and pseudoephedrine are marketed in prescription and over-the-counter drug products which have legitimate therapeutic uses as a bronchodilator and nasal decongestant, respectively.

The Deputy Administrator also finds that, over the past decades, DEA has been engaged in enforcement and regulatory activity to control the large-scale diversion of chemicals, including ephedrine and pseudoephedrine, into the illicit manufacture of controlled substances. The controlled substance methamphetamine is easily produced in clandestine laboratories using either ephedrine or pseudoephedrine. The process of manufacturing methamphetamine is easily accomplished with minimal equipment and readily available chemical supplies.

The Controlled Substances Act has always prohibited the illicit (i.e. without a DEA registration) manufacture of controlled substances. The earliest illicit methamphetamine laboratories used the freely available chemical P2P to produce methamphetamine, until that substance was itself scheduled as a controlled substance. In the 1980's, methamphetamine laboratories increasingly began to switch to an ephedrine process. The Chemical Diversion and Trafficking Act of 1988 (CDTA), Public Law 100–690, established the basic scheme of chemical regulation and imposed reporting and record keeping and import/export notification requirements on certain regulated transactions involving chemicals, including bulk ephedrine. Those listed chemicals contained in drug products were exempted at that time.

In response to these controls, illicit methamphetamine laboratories began to switch to tableted ''single entity'' ephedrine as a raw material. The Domestic Chemical Diversion Control Act of 1993 (DCDCA), Public Law 103–200, was then crafted to close the ephedrine ''loophole'' by removing the exemption for ''single entity'' ephedrine products, and lowering its sales threshold. In addition, the DCDCA initiated a registration requirement for handlers of List I chemicals.

Subsequently, illicit laboratories shifted to pseudoephedrine and combination ephedrine drug products as sources of raw material, prompting the passage of the Comprehensive Methamphetamine Control Act of 1996 (MCA), Public Law 104–237, to establish additional controls and quantity thresholds for reporting transactions regarding listed chemicals. The MCA also established a Suspicious Orders Task Force in part to assist in alerting the chemical industry to the many devices used by individuals who seek to divert large quantities of listed chemicals and listed chemical products into the illicit manufacture of controlled substances.

The Deputy Administrator finds that evidence was presented at the hearing to include certain data gathered from law enforcement sources and analyzed by DEA. This information demonstrated that seizures involving illicit methamphetamine laboratories have been increasing in recent years. For example, DEA methamphetamine laboratory-related seizures grew from 263 to more than 2,000 over the period from 1994 to 1999.

An additional number of state and local law enforcement methamphetamine-related seizures were reported in 1999.

The Deputy administrator finds that the record shows that DEA initiated a Warning Letter program intended to inform listed chemical registrants when their listed chemical products are discovered at illicit clandestine laboratory-related sites. According to DEA, this program was developed to assist DEA registrants to: (1) Identify products that had been diverted, and (2) allow registrants to decide upon appropriate remedial action. The record indicates and the Deputy Administrator finds that the Government presented evidence to show that 22 Warning Letters were issued to PDK advising it of the diversion of its listed chemical products. The first Warning Letter, sent to PDK in march 1998, documented 51 occasions in which PDK ephedrine and pseudoephedrine were found at various sites related to the illicit manufacture of methamphetamine. It appears that for investigative reasons, DEA did not resume sending Warning Letters to PDK until February 2000.

The Deputy Administrator finds that on February 15, 2000, DEA sent PDK a Warning Letter, which notified PDK that

throughout 1999 PDK's ephedrine and pseudoephedrine products had been discovered in sites related to the illicit manufacture of methamphetamine in eleven states. Thereafter, DEA sent PDK twenty more Warning Letters between February 2000 and January 2001. The Warning Letters notified PDK of the location of the illicit sites where PDK's ephedrine and pseudoephedrine products were discovered. The Warning Letters documented that PDK products were discovered in 18 states, including California and Missouri, where PDK had previously agreed with DEA not to sell listed chemical products. These Warning Letters documented that the range of 60 count bottles found at these various sites was from just a few bottles to about 14,000 bottles.

In Mediplas, the Deputy Administrator found ''the nine Warning Letters issued to Mediplas provided substantial evidence documenting the diversion of thousands of bottles of its previously imported List I chemical products[.]'' Mediplas, 67 FR at 41262. In this case, PDK received 22 Warning Letters documenting the diversion of thousands of bottles of its List I chemical products to approximately 140 illicit methamphetamine laboratory-related sites in at least 18 states. As in mediplas, the Deputy Administrator concludes that the Warning Letters issued to PDK provide substantial evidence documenting the diversion of thousands of bottles of its List I chemical products to ''the clandestine manufacture of a controlled substance.'' Mediplas, 67 FR at 41262; 21 U.S.C. 971(c)(1).

The Deputy Administrator finds that the record shows through testimony and documentary evidence that over a period of several years, PDK and DEA corresponded and met with the intention of resolving the problem regarding the diversion of PDK's ephedrine and pseudoephedrine products. Evidence presented by PDK indicated that it had taken steps to implement controls in its plant and distribution chain. During this period, DEA permitted certain listed chemical shipments, destined for PDK, to be imported. However, testimony shows that DEA personnel and PDK were not in agreement as to the level of success at controlling diversion of the PDK products. The Deputy Administrator concludes that the continued discovery of PDK's products in illicit settings, as documented by the Warning Letters, shows that diversion continues to occur.

The Deputy Administrator further finds that evidence was presented at the hearing that PDK, between 1994 and 1995, sold to Sun Labs of Canada at least four shipments of ephidrine. The president and owner of Sun Labs at the time was Perry Krape, former owner of PDK. The parties disputed whether these shipments were exports, which would then have required reporting to DEA on a DEA Form 486 within 15 days of the export pursuant to 21 CFR 1313.21(a). The ALJ noted in her findings of fact that Mr. Krasnoff of PDK credibly testified that these orders were delivered to New York, and further noted that Mr. Krasnoff assumed that Sun Labs's owner was going to distribute this product in Canada. The ALJ also noted that Mr. Krasnoff had a ''no-complete'' agreement with Sun Labs in which Sun Labs agreed that it would not sell ephidrine in PDK's territory, which included the entire United States. Although the ALJ noted that there was no testimony to demonstrate that the ephidrine actually was shipped to Canada, the Deputy Administrator finds that it is a reasonable inference that the ephidrine was destined for Canada, and that the ephidrine was not destined to remain in the United States in storage areas indefinitely. In fact, Mr. Krasnoff testified in reference to these transactions that he ''believe[d] that [Sun Labs] intention was to take the product to Canada at some point in time and that [Sun Labs] was putting together a distribution system in order to distribute that product in Canada.'' The Deputy Administrator finds, given the circumstances of these sales, and especially given PDK actually believed the product was designed for export. that PDK should have complied with DEA export regulations in effect at the time. The Deputy Administrator therefore concluded PDK violated 21 CFR 1313.21 by failing to file export notifications for each of the four shipments at issue, regardless of whether the ephidrine actually left the United States.

The Deputy Administrator notes that at that hearing DEA witnesses testified regarding traditional retail outlets and non-traditional retail outlets and the types of listed chemical products distributed to these outlets. The Government alleges that the traditional market is characterized by a short distribution pattern to large chain grocery stores, large chain drug stores, large discount retailers and large chain convenience stores. These products are packaged in blister packs and are 30 mg. in strength. DEA alleges the non-traditional outlets are characterized by a very lengthy distribution chain of listed chemical products and that these products are sold by gas stations, liquor stores, hair salons, ''head'' shops, and video stores. Allegedly, the non-traditional market packaging differs from the traditional market because non-traditional retail outlets sell pseudoephedrine in 60 mg. strength in bottles of 60 or more dosage units. The higher strength products are those products usually found at the illicit methamphetamine sites.

The ALJ noted that the Suspicious Orders Task Force identified certain ''suspicious orders'' identification criteria. This criteria included certain retail stores identified as ''non-traditional'' outlets for over-the-counter regulated products, for example, head shops, drug paraphernalia stores, liquor stores, record stores, and video shops. The Task Force Report did not identify convenience stores as ''nontraditional'' outlets. The Task Force Report criteria did identify as suspicious customers who resell large volumes into the ''independent convenience store'' market. The Deputy Administrator notes the record shows PDK does not distribute List I chemical products directly to customers, nor to any retail sales outlets, including convenience stores.

In Mediplas the Government also presented testimony concerning ''traditional'' versus ''non-traditional'' markets for List I chemical products. 67 FR at 41264. The Deputy Administrator found in that cast the ''the probative weight of this [anecdotal] evidence is minimal without some form of further extrinsic evidence to support these arguments.'' The Deputy Administrator adopts this finding in the present case, as the Government here relied upon essentially identical evidence as in Mediplas.

The Deputy Administrator has also considered the Government's arguments that PDK in 1995 and 1996 engaged in the mail order sale of excessive quantities of 25 mg. ephedrine products to consumers. A DEA Diversion Investigator testified that in his opinion, such sales to individuals, involving 14,000 to 32,000 tablets over periods ranging from one to nine months, were excessive in light of the levels of maximum therapeutic dosing. In addition, the record shows several individual retail customers received amounts of 12,000 dosage units or more per month. The record also shows that two of these customers were subsequently convicted of criminal felonies relating to the manufacture or distribution of methamphetamine and a third was arrested. The Government argues that PDK should have submitted reports to DEA concerning the transactions with these individuals

because such sales allegedly ''clearly'' excessive and should have been reported pursuant to 21 CFR 1310.05(a)(1).

The Deputy Administrator disagrees, and concerns instead with the position of the ALJ, who found DEA failed to prove by a preponderance of the evidence that PDK violated the excessive sales reporting requirements. The Deputy Administrator concurs with her finding that the record contains insufficient evidence to support the conclusion that the sales to these individuals constituted excessive quantities since the Government failed to rebut PDK's evidence that it reasonably believed the products were intended for repackaging and resale, and not for personal consumption by the purchasing individuals.

Further, despite the subsequent Federal arrest and conviction of two of these individuals for operating methamphetamine laboratories, the Deputy Administrator concurs with the ALJ's finding that there is no evidence in the record showing that PDK was aware if any illicit activity by these individuals at the time of the sales. The Deputy Administrator further concurs with the ALJ's finding evidence in the record demonstrating PDK's willingness to file suspicious transaction reports in cases where PDK had a factual basis for doing so.

The Deputy Administrator notes the record is replete with PDK's contentions that it has worked hard to evaluate its activities and to cooperate with DEA in stemming diversion. However, the record shows that diversion of PDK products has continued to occur, and that, based upon the Warning Letters received, PDK should have known its remedial actions were insufficient to stem the diversion of its List I chemical products. Moreover, the record shows evidence that PDK violated DEA export regulations on at least four occasions by failing to file the required notifications of its shipments to Sun Labs. The totality of the circumstances therefore supports the Government's assertion that the list chemicals sought to be imported and distributed to PDK may be diverted and furthermore that the Suspension Orders were proper and should be sustained. Mediplas, 67 FR at 41264. The fact that PDK products containing ephedrine and pseudolephedrine have repeatedly been found at the site of clandestine methamphetamine laboratories and dump sites is a significant indicator that these products may continue to be diverted to such illicit activities.

In arriving at this decision, the Deputy Administrator has considered PDK's stature and activities in the business community, its efforts at compliance, as well as the evidence available to DEA up to the time of the hearing. The Deputy Administrator finds that there was sufficient evidence at the time of the hearing to support DEA's contention that the chemicals may be diverted. Mediplas, 67 FR at 41260–41261. As the Deputy Administrator has previously noted, ''[e]vidence of a violation of law is not necessary to demonstrate that the suspensions were lawful.'' Mediplas, at 67 FR at 41262, citing Suspension of Shipments, 65 FR at 51337. Therefore, the Deputy Administrator concludes that the suspensions set forth in the January 25 and 26, 2001 Orders to Suspend Shipments of ephedrine hydrochloride issued to Indace and Malladi were justified.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 971 and 28 CFR 0.100(b) and 0.104, hereby orders that the suspensions of the above described shipments, be, and hereby are, sustained, and that these proceedings are hereby concluded.

This final order is effective immediately.

Dated: December 13, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–31949 Filed 12–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 237E]

Controlled Substances: Established Initial Aggregate Production Quotas for 2003

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of aggregate production quotas for 2003.

SUMMARY: This notice establishes initial 2003 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

EFFECTIVE DATE: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

The 2003 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2003 to provide adequate supplies of each substance for: the estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances for use in industrial processes.

On November 1, 2002, a notice of the proposed initial 2003 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (67 FR 66663). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before November 22, 2002.

Ten companies commented on a total of twenty Schedules I and II controlled substances within the published comment period. The companies commented that the proposed aggregate production quotas for amobarbital, amphetamine, codeine (for sale), codeine (for conversion), dextropropoxyphene, dihydrocodeine, fentanyl, glutethimide, hydrocodone (for sale), hydromorphone, methadone (for sale), methadone intermediate, methamphetamine (for conversion), methamphetamine (for sale), morphine (for conversion), noroxymorphone (for sale), opium, oxycodone (for sale), sufentanil and thebaine were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks. One company commented that the proposed aggregate production quota for methamphetamine (for sale) was adequate to provide for the estimated medical needs of the United States.

DEA has taken into consideration the above comments along with the relevant 2002 manufacturing quotas, current 2002 sales and inventories, 2003 export requirements and research and product development requirements, and

additional and revised applications for 2003 manufacturing quotas. Based on this information, the DEA has adjusted the initial aggregate production quotas for amobarbital, codeine (for conversion), codeine-N-oxide, glutethimide, methadone (for sale), methadone intermediate, levo-desoxyephedrine, methamphetamine (for conversion), morphine-N-oxide, opium, and sufentanil to meet the legitimate needs of the United States.

Regarding amphetamine, codeine (for sale), dextropropoxyphene, dihydrocodeine, fentanyl, hydrocodone (for sale), hydromorphone, morphine (for conversion), noroxymorphone (for sale), oxycodone (for sale), and thebaine, the DEA has determined that the proposed initial 2003 aggregate production quotas are sufficient to meet the current 2003 estimated medical, scientific, research and industrial needs of the United States.

Pursuant to Section 1303 of Title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 2003, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 2002 year-end inventory and actual 2002 disposition data supplied by quota recipients for each basic class of Schedules I and II controlled substance.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby orders that the 2003 initial aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established initial 2003 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	9,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
3-Methylfentanyl	4
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	10
3,4-Methylenedioxymethamphetamine (MDMA)	19
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2
4-Methoxyamphetamine	7
4-Methylaminorex	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
Allylprodine	2
Alphacetylmethadol	7
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	2
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	17
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	12
Codeine-N-oxide	202
Diethyltryptamine	2
Difenoxin	9,000
Dihydromorphine	1,101,000
Dimethyltryptamine	3
Gamma-hydroxybutyric acid	45,566,000
Heroin	5
Hydromorphinol	2
Hydroxypethidine	2
Lysergic acid diethylamide (LSD)	61
Marihuana	840,000
Mescaline	7
Methaqualone	9
Methcathinone	9
Methyldihydromorphine	2
Morphine-N-oxide	202
N,N-Dimethylamphetamine	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5

Basic class	Established initial 2003 quotas
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	52
Normethadone	7
Normorphine	57
Para-fluorofentanyl	2
Phenomorphan	2
Pholcodine	2
Propiram	415,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	131,000
Thiofentanyl	2
Trimeperidine	2
Schedule II:	
1-Phenylcyclohexylamine	12
1-Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	700
Alphaprodine	2
Amobarbital	451,000
Amphetamine	10,987,000
Cocaine	171,000
Codeine (for sale)	43,494,000
Codeine (for conversion)	43,559,000
Dextropropoxyphene	167,365,000
Dihydrocodeine	741,000
Diphenoxylate	501,000
Ecgonine	31,000
Ethylmorphine	12
Fentanyl	733,000
Glutethimide	1,002
Hydrocodone (for sale)	29,243,000
Hydrocodone (for conversion)	3,800,000
Hydromorphone	1,409,000
Isomethadone	12
Levo-alphacetylmethadol (LAAM)	12
Levomethorphan	2
Levorphanol	8,600
Meperidine	9,649,000
Metazocine	1
Methadone (for sale)	14,057,000
Methadone Intermediate	17,393,000
Methamphetamine	2,325,000
804,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,520,000 grams for methamphetamine for conversion to a Schedule III product; and 1,000 grams for methamphetamine (for sale)	
Methylphenidate	20,967,000
Morphine (for sale)	18,218,000
Morphine (for conversion)	110,774,000
Nabilone	2
Noroxymorphone (for sale)	40,000
Noroxymorphone (for conversion)	4,400,000
Opium	1,000,000
Oxycodone (for sale)	34,482,000
Oxycodone (for conversion)	700,000
Oxymorphone	454,000
Pentobarbital	27,728,000
Phencyclidine	16
Phenmetrazine	2
Phenylacetone	21,975,000
Secobarbital	1,100
Sufentanil	3,000
Thebaine	43,292,000

The Deputy Administrator further orders that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it

diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

Dated: December 13, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–31898 Filed 12–18–02; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Trade Act of 2002; Notice of Further Assignment of Functions

AGENCY: Office of the Secretary, Labor.

ACTION: The Secretary of Labor (Secretary) is further assigning functions under the Trade Act of 2002 (Trade Act) to other agencies and departments of the Executive Branch.

SUMMARY: The Trade Act specifically granted to the President certain authorities and assigned certain functions related to agreements covered by Trade Act provisions. In Executive Order 13277 (67 FR 7305), the President delegated certain authorities and assigned certain functions to the Secretary and provided guidance for exercising that authority and performing those functions, including the redelegation of authority and further assignment of functions to officers of any other department or agency within the Executive Branch. This notice informs the public of the Secretary's further assignment of functions. This order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

EFFECTIVE DATE: These actions are effective immediately.

FOR FURTHER INFORMATION CONTACT: Thomas B. Moorhead, Deputy Under Secretary for International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–4470. E-Mail: *moorhead-thomas@dol.gov*.

SUPPLEMENTARY INFORMATION: *Further Assignment of Functions:* Pursuant to section (3)(b)(ii) of Executive Order 13277, the Secretary hereby assigns the functions of the President under section 2102(c)(8) and (9) of the Trade Act to the Secretary of State and the United States Trade Representative, to be carried out by the Secretary of Labor, the Secretary of State and the United States Trade Representative. Agencies and departments to which these functions are assigned shall perform them in a manner that is supportive of agreements subject to the Trade Act.

Signed in Washington, DC, this 13th day of December, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–31950 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6584]

State of Alaska Commercial Fisheries Entry Commission Permit #56739M, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56739M, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31951 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6585]

State of Alaska Commercial Fisheries Entry Commission Permit # 57548Z, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was

initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 57548Z, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31952 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6587]

State of Alaska Commercial Fisheries Entry Commission Permit #55864E, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55864E, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31953 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6588]

State of Alaska Commercial Fisheries Entry Commission Permit #66987N, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66987N, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31954 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6589]

State of Alaska Commercial Fisheries Entry Commission Permit #61291B, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61291B, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31955 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6591]

State of Alaska Commercial Fisheries Entry Commission Permit #55571X, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55571X, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31956 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6593]

State of Alaska Commercial Fisheries Entry Commission Permit #67873L, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #67873L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31957 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6594]

State of Alaska Commercial Fisheries Entry Commission Permit #55102V, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit# 55102V, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31958 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6595]

State of Alaska Commercial Fisheries Entry Commission Permit #65913K, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65913K, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31959 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6597]

State of Alaska Commercial Fisheries Entry Commission Permit #56728W, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56728W, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31960 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6840]

State of Alaska Commercial Fisheries Entry Commission Permit # 55486Z, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55486Z, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31961 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6841]

State of Alaska Commercial Fisheries Entry Commission Permit #58475G; Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58475G, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31962 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6842]

State of Alaska Commercial Fisheries Entry Commission Permit #60325V, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60325V, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31963 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6843]

State of Alaska Commercial Fisheries Entry Commission Permit #61475R, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61475R, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31964 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6844]

State of Alaska Commercial Fisheries Entry Commission Permit #59565P, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59565P, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31965 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6846]

State of Alaska Commercial Fisheries Entry Commission Permit #56810I, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56810I, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn.c

onsequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31966 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6848]

State of Alaska Commercial Fisheries Entry Commission Permit #63407P, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #63407P, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31967 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6849]

State of Alaska Commercial Fisheries Entry Commission Permit #63405G, Manokotak, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #63405G, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31968 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6850]

State of Alaska Commercial Fisheries Entry Commission Permit #58046U, Manokotak, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58046U, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31969 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6852]

State of Alaska Commercial Fisheries Entry Commission Permit #59829U, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59829U, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31970 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the Federal Advisory Council on Occupational Safety and Health (FACOSH), established under Section 1–5 of Executive Order 12196 on February 6, 1980, published in the **Federal Register,** February 27, 1980 (45 FR 1279). FACOSH will meet on January 8, 2003, starting at 9 a.m., in Room N–3437 A/B/C/D of the Department of Labor Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. The meeting will adjourn at approximately 11:30 a.m., and will be open to the public. All persons wishing to attend this meeting must exhibit photo identification to security personnel.

Agenda items will include:

1. Call to Order
2. Report from Workgroups
   a. Federal Executive Institute training initiative
   b. Proposed Recordkeeping Changes
3. Federal Safety, Health, and Return-to-Employment Proposal
4. OSHA Webpage Project
5. Update on Federal Safety and Health Council Conference
6. New business
7. Adjournment

Written data, views, or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs at the address provided below. All such submissions, received by December 19, 2002, will be provided to the Federal Advisory Council members and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business January, 3 2002. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline

of the content of the presentation. Persons who request the opportunity to address the Federal Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson. Individuals with disabilities who wish to attend the meeting should contact Tom Marple at the address indicated below, if special accommodations are needed.

For additional information, please contact Thomas K. Marple, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 11th day of December 2002.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 02–31783 Filed 12–18–02; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Arts Education: January 14–17, 2003, Room 716 (Arts Learning category-section B1). A portion of this meeting, from 1 p.m. to 2 p.m. on January 17th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on January 14th and 16th, from 9 a.m. to 6:30 p.m. on January 15th, and from 9 a.m. to 1 p.m. and 2 p.m. to 3:45 p.m. on January 17th, will be closed.

Arts Education: January 28–31, 2003, Room 716 (Arts Learning category-Section B2). A portion of this meeting, from 1 p.m. to 2 p.m. on January 31st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on January 28th and 30th, from 9 a.m. to 6:30 p.m. on January 29th, and from 9 a.m. to 1 p.m. and 2 p.m. to 3:45 p.m. on January 31st, will be closed.

Folk & Traditional Arts: January 21–24, 2003, Room 716 (National Heritage Fellowships category). A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on January 23rd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on January 21st and 22nd, from 9 a.m. to 1:30 p.m. and 2:30 p.m. to 6:30 p.m., on January 23rd, and from 9 a.m. to 3:30 p.m. on January 24th, will be closed.

Arts Education: February 4–7, 2003, Rooms 714 & 716 (Arts Learning category—sections C1 and C2). A portion of this meeting, from 1 p.m. to 2 p.m. on February 7th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on February 4th and 6th, from 9 a.m. to 6:30 p.m. on February 5th, and from 9 a.m. to 1 p.m. and 2 p.m. to 3:45 p.m. on February 7th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: December 12, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–31909 Filed 12–18–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–30097]

Dr. Ilia Ruiz Gandulla, Environmental Assessment and Final Finding of No Significant Impact; Exemption

The U. S. Nuclear Regulatory Commission is authorizing Ilia Ruiz Gandulla, M.D., License No. 52–24929–01, an exemption to 10 CFR 35.432, for 90 days to permit the licensee to continue the medical use of its strontium-90 eye applicator without determining the source output or activity based on a calibration performed as required by 10 CFR 35.432. During this period, the licensee shall use the activity value (corrected for decay) provided by the strontium-90 eye applicator brachytherapy 1988 calibration certificate for ophthalmic treatment.

Environmental Assessment

Identification of the Proposed Action

Ilia Ruiz Gandulla, M.D., has a United States Nuclear Regulatory Commission (NRC) license (License No. 52–24929–01) that authorizes the use, for medical therapeutic patient treatment purposes, of a strontium-90 eye applicator sealed source. The licensee has requested, in a letter dated November 21, 2002, that the NRC grant her an exemption for a limited period of time from the source calibration requirement in 10 CFR 35.432, in order to use the licensed source for patient treatment until a laboratory authorized to calibrate the source can provide the calibration required by 10 CFR 35.432. This requirement became effective on October 24, 2002.

10 CFR section 35.432 specifies that licensees may only use brachytherapy sources on or after October 24, 2002, if the licensee shall have determined the source output or activity using a dosimetry system that meet the requirements of 10 CFR 35.630(a). To meet this requirement, a licensee may perform the measurements, or use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with the referenced section of the rule.

Since the 1988 calibration of the source was not performed in accordance with the requirements of 10 CFR 35.432, Dr. Gandulla, an opthamologist practicing in Mayaguez, Puerto Rico, has not been able to use the source since October 24, 2002. She requested recalibration of her strontium-90 eye

applicator source by an accredited calibration laboratory, but the calibration laboratory has a backlog of requests and cannot send the transportation container needed to ship the source at this time. The calibration is expected to be completed by December 31, 2002. Dr. Gandulla does not have the authorization or equipment to perform the calibration and the strontium-90 source manufacturer cannot provide the calibration because the manufacturer is no longer in business. Dr. Gandulla requested an exemption that would permit her to continue to perform patient treatments until the required recalibration can be performed.

Need for the Proposed Action

The exemption is needed so that Dr. Gandulla can continue to provide optimum medical treatment to her patients. The exemption would allow Dr. Gandulla to use the activity from the 1988 calibration certificate (corrected for decay) to determine the treatment times for ophthalmic conditions. This would permit continued use of the source prior to its recalibration and provide needed timely patient therapeutic services without interruption. Recalibration of the licensed strontium-90 eye applicator is expected to be performed by December 31, 2002. The 90-day duration of the exemption allows for flexibility if there is a delay in the calibration laboratory's ability to supply the transportation container necessary to ship the source. NRC inspections since 1988 have not identified any medical events associated with the use of the source or the treatment times developed using the existing activity values.

Environmental Impacts of the Proposed Action

The strontium-90 eye applicator source is a sealed source and no material will be released into the environment. All the strontium-90 is contained within the brachytherapy source, as verified by periodic source leak tests performed by the licensee. The proposed action does not increase public radiation exposure. There will be no impact on the environment as a result of the proposed action.

Alternatives to the Proposed Action

As required by section 102(2)(E) of NEPA (42 U.S.C. 4322(2)(E)), possible alternatives to the final action have been considered. The alternatives are to deny the exemption request and to require the licensee to: (1) return the source for calibration to the manufacturer, (2) have another calibration laboratory perform the measurements, (3) perform the calibration measurements, or (4) put the sources in storage until the calibration can be performed. The sources cannot be returned to the manufacturer because the manufacturer is no longer in business. Dr. Gandulla has already requested calibration by an accredited calibration laboratory. The licensee does not have the qualifications, authorization, or equipment to perform the calibration. The only other possible option is to require that the licensee place the source in storage. This option would not produce a gain in protecting the human environment, and it would negatively impact the licensee-physician's provision of medical care to her patients.

Alternative Use of Resources

No alternative use of resources was considered due to the reasons stated above.

Agencies and Persons Consulted

No other agencies or persons were contacted regarding this proposed action.

Identification of Source Used

Letter from Ilia Ruiz Gandulla, M.D., to U.S. Nuclear Regulatory Commission, Region II, dated November 21, 2002.

Finding of No Significant Impact

Based on the above environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate and preparation of an environmental impact statement is not warranted.

The licensee's letter is available for inspection, and/or copying for a fee, in the Region II Public Document Room, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303 The document is available electronically for public inspection from the Publically Available Records (PARS) component of NRC's Documents Access and Management System (ADAMS), accession number ML023250443. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.*

Dated in Rockville, Maryland, this 13th day of December, 2002.

For the Nuclear Regulatory Commission.

Frederick Brown,

Section Chief, Material Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–31943 Filed 12–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Final Finding of No Significant Impact and Availability of the Environmental Assessment Regarding Troxler Electronic Laboratories, Inc., Request for Exemption

I. Introduction

NRC is considering the granting of an exemption from the provisions in 10 CFR 32.14, to allow Troxler Electronic Laboratories, Inc. (hereafter Troxler) to manufacture and distribute the Model CoreReader density gauge as an exempt product. The NRC staff performed an Environmental Assessment (EA) in support of its review of Troxler's request, in accordance with the requirements in 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

II. Supplementary Information

Background

Troxler has requested a license to manufacture and distribute an ionizing measuring instrument for density readings (CoreReader) as an exempt product. This licensing action requires an exemption from the provisions of 10 CFR 32.14, which specify that licensees can incorporate byproduct material into products that meet the requirements found in 10 CFR 30.15.

The CoreReader is an ionizing radiation measurement instrument that determines the specific gravity of a compacted asphalt sample. The construction of the CoreReader is all metal housing and includes lead shielding around the source. It is a bench top laboratory instrument containing eight exempt-quantity cesium-137 sources (10 microcuries/0.37 MBq each) installed in plexiglass which is filled and sealed with an epoxy. The sources are held in a subassembly inside the device which is mounted inside the lower third of the device below the sample chamber. It is not removable and is completely inaccessible to the user. The total activity is 80 microcuries (3 MBq).

Troxler has requested an exemption from 10 CFR 32.14, to allow it to distribute the CoreReader as an exempt

device instead of a generally licensed device. The use of the CoreReader would be one element in the implementation of the Strategic Highway Research Program (SHRP), established by Congress in 1987 to develop and evaluate innovative technologies for roadway construction, maintenance, and operations. The SHRP program produced Superpave, a more reliable asphalt-mix design, analysis, and quality control methodology that utilizes an advanced technology approach to pavement design.

Implementation of the Superpave-mix design has resulted in superior performing asphalt pavements. However, the coarser mixtures resulting from Superpave-mix designs have caused problems with the accuracy and precision to measure the specific gravity of laboratory specimens and pavement core samples. The overestimation of density results in premature pavement distress and permeability related problems. Troxler's CoreReader is a technology improvement that overcomes the shortcomings of current water displacement methods for measuring the specific gravity of asphalt samples. Unlike current methods, the CoreReader uses radiation from a distribution of sources to probe the entire volume of an asphalt sample. By doing so, it can accurately measure the coarser Superpave-mixes. The CoreReader reduces operator dependence, improves accuracy and precision, and reduces laboratory differences in measurements to produce better pavement designs.

Troxler's experience with the distribution of generally licensed gauges shows that despite the CoreReader's advantages, it would be attractive to end-users only if it could be distributed nationally under uniform licensing with low quantities of radioactive material contained in it. Many potential users have indicated that they are unwilling to deal with additional regulatory burdens associated with generally licensed devices. Therefore, Troxler has asserted in its request that the CoreReader's benefits can be fully realized only if it is licensed for exempt distribution.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the exemption, in accordance with 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions. The exemption would authorize Troxler to manufacture and distribute the CoreReader as an exempt product.

The results of the staff's assessment of potential environmental impacts are documented in an EA which, as noted above, has been placed in the Publicly Available Records component of NRC's document system (ADAMS). Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The proposed action that the NRC is considering is to issue an exemption from 10 CFR 32.14. The proposed action allows Troxler to distribute the CoreReader density gauge as an exempt device. The alternatives available to the NRC are:

1. Approve the exemption request as submitted; or

2. Deny the request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant denial of the exemption request. The staff considers that Alternative 1 is the appropriate alternative for selection.

Conclusion

The NRC staff considered the risk to human health from distribution and transportation, routine use, disposal, and accidents and misuse, as well as the environmental consequences of approving an exemption from 10 CFR 32.14 for the Troxler CoreReader, and has determined that the approval of this exemption is (1) authorized by law; (2) will not endanger life or property or the common defense and security; and (3) is otherwise in the public interest.

III. Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed exemption from 10 CFR 32.14. On the basis of the assessment, the NRC staff has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, a Finding of No Significant Impact is appropriate.

IV. Further Information

The EA and the documents related to this proposed action are available for public inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* The accession number of the electronic file for the related documents is ML023190183; the direct accession number of the EA within this file is ML023450624. Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20854. Any questions regarding this action can be directed to Dr. John P. Jankovich at (301) 415–7904 or by e-mail at *JPJ2@nrc.gov.*

Dated in Rockville, Maryland, this 13th day of December, 2002.

For the Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Materials Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–31944 Filed 12–18–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25847; 812–12678]

Cohen & Steers Advantage Income Realty Fund, Inc., et al.; Notice of Application

December 12, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to make long-term capital gains distributions to holders of shares of their preferred stock.

APPLICANTS: Cohen & Steers Advantage Income Realty Fund, Inc. (''RLF''), Cohen & Steers Quality Income Realty Fund, Inc. (''RQI''), Cohen & Steers Premium Income Realty Fund, Inc. (''RPF''; each of RPF, RQI and RLF, an ''Existing Fund'' and collectively, the ''Existing Funds''), Cohen & Steers Capital Management, Inc. (including any successor in interest[1], the ''Adviser'') and each registered closed-end management investment company to be advised in the future by the Adviser or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser (such

[1] A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

investment companies, the ''Future Funds'' and together with the Existing Funds, the ''Funds'').[2]

FILING DATES: The application was filed on October 31, 2001 and amended on December 11, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 6, 2003 and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Laurence B. Stoller, 757 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, at (202) 942–0567, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Existing Funds are organized as Maryland corporations and registered under the Act as non-diversified, closed-end management investment companies. The primary objective of each Existing Fund is high current income through investment in real estate securities. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, serves as the investment adviser to the Existing Funds.

2. Each Fund has or will have two classes of stock: a single class of common stock and a single class of auction rate cumulative preferred stock issued in one or more series. The common stock of each Existing Fund is listed and traded on the New York Stock Exchange. Shares of preferred stock of each Fund are, or will be, subject to purchase and sale at auctions that are generally held at seven or twenty-eight day intervals or at such other interval as specified in the articles supplementary or other corporate organizational documents creating such auction rate preferred stock (each of the foregoing, an ''Auction Interval'').

3. Each Fund has paid or will pay dividends on its preferred stock at an Auction Interval. The Board of Directors of each Fund (each, a ''Board'') has set or will set the initial dividend rate on each series of the Fund's preferred stock as a specified percentage of the liquidation preference of the series of the preferred stock.[3] Thereafter, each Fund pays or will pay an amount of dividend based on rates determined by auction or, under certain circumstances, by a predetermined formula. All investment income remaining after the payment of each Fund's preferred stock dividends and expenses will be paid monthly to holders of common stock at a specified amount.

4. Each Fund also will make annual distributions of realized long-term capital gains, if any, to both holders of common and preferred stock. Distributions of long-term capital gains are designed to comply with IRS Revenue Ruling 89–81, 1989–1 C.B. 226 (''Revenue Ruling 89–81''). Depending upon the amount of long-term capital gains realized in a fiscal year, the period of time between auctions, and the amount of the dividend as set by auction, each Fund may be required to distribute a greater number of long-term capital gains distributions to its preferred stockholders than is permitted by section 19(b) of the Act and rule 19b–1 under the Act to comply with Revenue Ruling 89–81. Holders of common stock in each Fund will receive long-term capital gains distributions in compliance with section 19(b) and rule 19b–1.

5. Applicants request relief to permit each Fund to make long-term capital gains distributions to its preferred stockholders in any one taxable year to the extent necessary to comply with Revenue Ruling 89–81, provided that, the Fund maintains in effect a distribution policy calling for distributions to its preferred stockholders at each Auction Interval at rates determined by the Board of the Fund at the time a series of such preferred stock is initially issued, and thereafter pursuant to auction, or under certain circumstances, by a predetermined formula.

Applicants' Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(c) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Revenue Ruling 89–81 requires that a regulated investment company that has two or more classes of stock make designations of various types of income in the same proportion as the total dividends distributed to each class for the taxable year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a Fund has realized a long-term capital gain with respect to a given tax year, the Fund designates the required proportionate share of such capital gain to be included in common and preferred stock dividends. The Fund calculates the ratio by dividing the total dividends paid to preferred stockholders during a taxable year by the total dividends paid to all classes during that year. The Fund then declares and distributes designated long-term capital gains dividends to the common and preferred stockholders in proportion to this ratio.

3. Applicants state that under certain circumstances, a Fund will be able to comply with both Revenue Ruling 89–81 and rule 19b–1. For example, if the entire dividend payment set at auction distributes in a single dividend the full amount of long-term capital gains required to be distributed by Revenue Ruling 89–81, the Fund will comply with both Revenue Ruling 89–81 and rule 19b–1. Applicants assert, however, that circumstances may arise when a

[2] All existing registered closed-end management investment companies that currently intend to rely on the requested order are named as applicants and any Future Fund that may rely on the order in the future will comply with the terms of the application.

[3] The respective Board of each of RLF, RQI and RPF set the initial dividend rate on each series of the respective Fund's preferred stock on July 20, 2001, April 1, 2002 and October 10, 2002.

Fund must make additional long-term capital gains distributions to comply with Revenue Ruling 89–81 that conflict with rule 19b–1. Applicants note that while rule 19b–1 does give a Fund some flexibility with respect to capital gains distributions, a Fund could have used all of the exceptions provided by rule 19b–1 and, in need of making further distributions to its preferred stockholders, be unable to comply with Revenue Ruling 89–81, section 19(b) and rule 19b–1.

4. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of rule 19b–1 was that investors might be unable to distinguish between regular distributions of capital gains and distributions of investment income. In the case of preferred stock, applicants state there is little chance for investor confusion since all an investor expects to receive is the cash amount representing the specified dividend distribution for any particular dividend period and no more. Applicants state that in accordance with rule 19a–1 under the Act, a separate statement showing the net investment income component of the distribution will accompany each Fund's preferred stock dividend, with a statement being provided near the end of the last dividend period in a year indicating the source or sources of each distribution (*i.e.*, net investment income (including short-term capital gains), net long-term capital gains and/or returns of capital) that was made on preferred stock during the year. Applicants also state that in each Fund's annual reports and other communications with stockholders, the Fund will regularly inform its stockholders that the Fund's dividends and distributions may not be tied to its investment income and capital gains and could represent a return of the Fund's capital, and that any return of the Fund's capital would not represent yield or investment on the Fund's investment portfolio. In addition, applicants state that, for its preferred stock, each Fund will include the amount and sources of distributions received during the year on the Fund's IRS Form 1099–DIV report of distributions and send that report to each stockholder who received distributions during the year (including stockholders who sold shares during the year). Applicants state that this information on an aggregate basis also will be included in each Fund's annual report to stockholders.

5. Another concern underlying section 19(b) and rule 19b–1 is that frequent long-term capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend (''selling the dividend'') where the dividend results in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as the Funds, which do not continuously distribute their shares. Applicants also state that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to a specified periodic dividend and no more, and like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment.

6. Applicants state that another concern leading to the adoption of section 19 and rule 19b–1, increase in administrative costs, is not present because the Funds will make periodic distributions with respect to their preferred stock regardless of what portion is composed of long-term capital gains.

7. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested exemption meets the standards set forth in section 6(c).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31932 Filed 12–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25846; 812–12870]

The Hartford Series Fund Inc.; Notice of Application

December 12, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(f)(1)(A) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit a registered open-end investment company advised by HL Investment Advisors, LLC (the ''Adviser'') not to reconstitute its board of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act, following the acquisition of the assets of certain other registered open-end investment companies.

APPLICANTS: The Hartford Series Fund, Inc. (''Hartford Series Fund''), and the Adviser.

FILING DATES: The application was filed on August 21, 2002, and amended on December 9, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 6, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, 55 Farmington Ave, Hartford, CT 06105.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Janet M. Grossnickle, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Hartford Series Fund is an open-end management investment company registered under the Act and is a Maryland corporation, consisting of 26 series. The Adviser, an indirect subsidiary of the Hartford Life and

Accident Insurance Company (''Hartford Life'') serves as investment adviser to the Hartford Series Fund. The Adviser is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'').

2. Hartford HLS Series Fund II, (''HLS Series Fund II''), a Maryland corporation, offers 16 separate series. At the time of the Acquisition (as defined below), Fortis Advisers Inc. (now known as Hartford Administrative Services Company) (''Fortis'') served as investment adviser to the HLS Series Fund II, formerly known as Fortis Series Fund, Inc. Fortis was registered under the Advisers Act.

3. Hartford Life purchased all of the outstanding stock of Fortis on April 2, 2001, (the ''Acquisition''), and shareholders of each of the Fortis Funds (as defined below) approved an investment management agreement with the Adviser at a shareholder meeting held on May 31, 2001. It is now proposed that certain series of the Hartford Series Funds (''Hartford Funds'') would acquire the assets of certain series of the HLS Series Fund II (the ''Reorganization'').[1] The series of the HLS Series Fund II proposed to be acquired by the Hartford Funds are referred to herein as the (''Fortis Funds'').

4. Applicants state that the Acquisition resulted in a change of control of Fortis and an assignment under the Act of the investment advisory agreements between the Fortis Funds and Fortis, resulting in their automatic termination in accordance with their terms, as required by section 15(a)(4) of the Act. The boards of directors (''Boards'') of the Fortis Funds, at a meeting held on March 23, 2001, approved interim advisory agreements which remained in effect from the date of the Acquisition, April 2, 2001, until definitive investment advisory agreements for each of the Fortis Funds were approved by their shareholders on May 31, 2001 in reliance on rule 15a–4 under the Act.

5. On August 1, 2002, the Hartford Funds' Board (including all of the directors who are not ''interested persons'' of the Adviser) and the Fortis Funds'' Board (75% of whom are not ''interested persons'' of the Adviser or the Hartford Series Fund), respectively, unanimously approved the proposed Reorganization. Participation in the Reorganization will require approval by a majority of the outstanding shares of each of the Fortis Funds. The Fortis Funds' Board has called a special meeting of the Fortis Fund's shareholders to be held on January 15, 2003, for the purpose of considering the Reorganization. If approved by shareholders, the Reorganization is scheduled to be effective on or about January 24, 2003.

6. In connection with the Acquisition and the Reorganization, Applicants have determined to seek to comply with the ''safe harbor'' provisions of section 15(f) of the Act. Applicants state that following consummation of the Reorganization, more than twenty-five percent of the Board of the Hartford Series Funds would be ''interested persons'' for purposes of section 15(f)(1)(A) of the Act.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of these conditions, set forth in section 15(f)(1)(A), provides that, for a period of three years after the sale, at least seventy-five percent of the board of directors of the investment company may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company. Applicants state that, without the requested exemption, following the Reorganization, Hartford Funds would have to reconstitute their Boards to meet the seventy-five percent non-interested director requirement of section 15(f)(1)(A).

2. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all of the assets by a registered company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the Commission in determining whether, or to what extent, to grant exemptive relief under section 6(c) from section 15(f)(1)(A).

3. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, or any rule or regulation under the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) of the Act from section 15(f)(1)(A) of the Act. Applicants state that, as of November 30, 2002, Fortis Funds had approximately $84,215,775 in aggregate net assets. Applicants also state that, as of November 30, 2002, the aggregate net assets of the Hartford Series Funds were approximately $39,739,679,245. Applicants thus assert that the Fortis Funds' assets would represent approximately 0.21% of the aggregate net assets of the Hartford Series Funds.[2]

5. Applicants state that three of the nine directors who serve on the Board of Hartford Series Fund are ''interested persons,'' within the meaning of section 2(a)(19) of the Act, of the Adviser. Applicants also state that prior to the Acquisition none of the directors owned any interest in or was otherwise an ''interested person'' of Fortis or the Fortis Funds.

6. Applicants state that to comply with section 15(f)(1)(A) of the Act, Hartford Series Funds would have to alter the composition of its Board, either by asking an experienced director to resign or by adding three new disinterested directors. Applicants state that adding three additional directors would also add unnecessarily to the expenses of the Reorganization and the ongoing expenses of Hartford Series Funds. Applicants also assert that removing an interested director would deny shareholders the valued services, insight and experience such a director contributes and that it would be unfair to require the twenty-two series of Hartford Series Fund which are not involved in the Reorganization to reconstitute its Board to effect the acquisition of the relatively few Fortis Funds.

7. For the reasons stated above, applicants submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

[1] Applicants were party to a similar application for an order of exemption from section 15(f)(1)(A) of the Act. *The Hartford Mutual Funds, Inc. et al.*, Investment Company Act Rels. No. 25372 (January 18, 2002) (notice) and 25419 (February 13, 2002) (order) (''Previous Application''). Applicants do not anticipate that any of the remaining series of the HLS Series Fund II or Hartford-Fortis Series Fund, Inc. not party to the Reorganization will be reorganized into the Hartford Funds (as defined in the Previous Application) within the three years following the Acquisition.

[2] Applicants also state that the combined aggregate net assets of the Fortis Funds referred to in this application and the Fortis Funds referred to in the Previous Application would have represented approximately 7.40% of the aggregate net assets of the Hartford Funds referred to in the Previous Application as of December 31, 2001.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31933 Filed 12–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 77104, December 16, 2002].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF CLOSED MEETING: Additional Meeting.

The Securities and Exchange Commission will hold an additional Closed Meeting during the week of December 16, 2002:

An additional Closed Meeting will be held on Wednesday, December 18, 2002 at 11:30 a.m.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), and (10) and 17 CFR 200.402(a)(5), (7), and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Wednesday, December 18, 2002 will be:

Formal order of investigation;

Institution of administrative proceedings of an enforcement nature; and

Institution of injunctive actions;

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 17, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–32071 Filed 12–17–02; 11:29 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Suffolk County, NY

AGENCY: Federal Highway Administration, NYSDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed highway project PIN 0016.20, Reconstruction of NY Route 112, I–495 to Skips Road (Mill Road Connector), Suffolk County, New York.

FOR FURTHER INFORMATION CONTACT:

Thomas Oelerich, P.E., Acting Regional Director, New York State Department of Transportation, 250 Veterans Memorial Highway, Hauppauge, New York 11788, Telephone: (631) 952–6632, or

Robert Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on the proposal to improve NY Route 112, I–495 to Skips Road (Mill Road Connector), Suffolk County, New York. The proposed improvement would involve the reconstruction of the existing route in the hamlets of Coram and Medford, Town of Brookhaven for a distance of 4.6 km (3 miles). The objectives of the project are:

- Provide cost effective improvements so that the existing facility will provide adequate capacity and operational characteristics, which are compatible with planned current and long-range transportation improvements to address project area development and growth.
- Improve highway conditions to provide satisfactory access to abutting land uses.
- Provide cost effective improvements to the existing transportation factility which will mitigate adverse social, economic and environmental consequences; minimize adverse effects on culturally significant sites; and which are acceptable to the community.
- Improve intersection capacity and operation to eliminate recurring daily delay.
- Provide transportation improvements that reduce or eliminate the potential of vehicular conflict/accident.
- Correct identified pavement deficiencies in order to attain a structurally sound highway.
- Provide an adequate closed drainage system to convey roadway storm water runoff and eliminate existing roadway flooding conditions.

Alternatives under consideration include one no-build and one build alternatives as follows:

- Alternative I—no build.
- Alternative II—build; involving reconstruction and realigning of NY Route 112 into a four-lane highway with two-way continuous left turn land or raised median.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. In addition, a public information center/scoping meeting will be held in Brookhaven Town Hall in Medford on January 14, 2002. Public notice will be given of the time and place of the meeting. A formal NEPA scoping meeting will not be held.

To ensure that the full range of issues related to this proposed action are addressed and all substantial issues and alternatives identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the NYSDOT and FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: December 10, 2002.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, New York Division, Albany, New York.

[FR Doc. 02–32001 Filed 12–18–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: New System of Records—Police and Security Records—VA (103VA07B).

SUMMARY: As required by the Privacy Act of 1974, Title 5 United States Code, Section 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system of records, ''Police and Security Records—VA'' (103VA07B).

DATES: Comments on the establishment of this new system of records must be received no later than January 21, 2003. If no public comment is received, the new system will become effective January 21, 2003.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Director, Police and Security Service (07B), Department of Veterans affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–5544.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed Systems of Records

Until 1989, the VA Police and Security Service was organizationally within VA's Veterans Health Administration (VHA) and its mission was the operational oversight and guidance of the security services at VHA health care facilities nationwide. In 1989, Police and Security Service was placed within the Office of the Deputy Assistant Secretary for Security and Law Enforcement within the Office of the Assistant Secretary for Human Resources and Administration. The Office of Security and Law Enforcement oversees the maintenance of law and order and the protection of persons and property on Department property at VA facilities nationwide and at the Central Office facilities. In addition, it oversees the Department's Personnel and Classified Information Security Program.

The new system of records will cover veterans, Federal government employees, VA police officers, retirees, volunteers, contractors, subcontractors, and other individuals, including private citizens, involved in activities within the assigned responsibilities of Police and Security Service at VA field facilities and Central Office. The records in the system will be comprised of electronic and paper records that contain information retrieved by name or personal identifier and found in such files as a master name index file, quick name check, offense reports, violations, motor vehicle registrations, wants and warrants, police daily operations journal, police officer training records, photographs, uniform offense reports, accident reports, information on identification cards, records of evidence and property, and records of citations. The authority to maintain these records is Title 38, United States Code, Section 501 and Sections 901–905. The records and information contained in this system of records are necessary for the effective administration and management of the Department's nationwide Police and Security program. This requires the collection and use of accurate, up-to-date data for the purposes of enforcing laws protecting persons and property on VA property and at VA Central Office, and overseeing VA's Emergency Preparedness and Personnel and Classified Information Security programs. Records in the system are maintained electronically, on paper, or both, and are retrieved by the name or Social Security Number of any one of several individuals who may be identified in data fields in the electronic records maintained on VistA and entered and accessed by means of the Police and Security VistA module. These individuals include victim, VA police officer, witness, and suspect.

II. Proposed Routine Use Disclosures of Data in the System

A. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Individuals sometimes request the help of a Member of Congress in resolving some issues relating to a matter before VA. The Member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

B. Disclosure may be made to National Archives and Records Administration (NARA) in records management activities and inspections conducted under authority of Title 44 United States Code.

NARA is responsible for archiving records no longer actively used, but which may be appropriate for preservation. NARA is responsible, in general, for the physical maintenance of the Federal government's records. VA must be able to turn records over to this Agency in order to determine the proper disposition of such records.

C. Disclosure may be made to the Department of Justice (DoJ) and United States attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, Title 28 United States Code, Section 2672.

VA must be able to provide information to DoJ and other Federal agencies for litigation of tort claims.

D. Any information in this system, except for the name and address of a veteran, may be disclosed to a Federal, State, local, tribal, or foreign agency maintaining civil or criminal violation records, or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational background in order for VA to obtain information relevant to the hiring, transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit. The name and address of a veteran may be disclosed to a Federal agency under this routine use if this information has been requested by the Federal agency in order to respond to the VA inquiry.

VA needs to obtain information from other agencies in order to conduct background and security clearance checks on applicants for employment to VA, contractors, or persons requesting a grant.

E. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

VA must be able to notify agencies charged with enforcing the law or conducting investigations. VA must also

be able to provide information to State or local agencies charged with protecting the public health as set forth in State law.

F. Information from this system of records may be disclosed to DoJ or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear when: the Agency, or any component thereof, or any employee of the Agency in his or her official capacity, where DoJ or the Agency has agreed to represent the employee or the U.S.; when the Agency determines that litigation is likely to affect the Agency, or any of its components, is a party to litigation and has an interest in such litigation, and the use of such information by DoJ or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which the records were collected.

Whenever VA is involved in litigation, or occasionally when another party is involved in litigation, and VA policies or operations could be affected by the outcome of the litigation, VA would be able to disclose information to the court or parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by the use of the information in the particular litigation is compatible with a purpose for which VA collects the information.

G. Information in this system regarding traffic accidents may be disclosed to private insurance companies for use in determining payment of a claim under a policy.

H. Any Information in this system may be disclosed to attorneys representing veterans, employees, contractors, subcontractors, or private citizens being investigated and/or prosecuted for violating the law to assist attorneys in representing their clients, except where VA has decided release is inappropriate under Title 5, United States Code Sections 552a(j) and (k).

I. Disclosure of information to the Federal Labor Relations Authority (FLRA) (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

The release of information to FLRA from this Privacy Act system of records is necessary to comply with the statutory mandate under which FLRA operates. It has also been determined that the release of information for this purpose is a necessary and proper use of the information in this system of records.

J. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

K. Information may be disclosed to officials of the Merit Systems Protection Board, and the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in Title 5 United States Code, Sections 1205 and 1206, or as may be authorized by law.

L. Disclosure may be made to the VA-appointed representative of an employee of all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits disclosure of information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which the information is collected. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs; to provide a benefit to VA; or because disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (61 FR 6428), February 20, 1996.

Approved: August 12, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

103VA07B

SYSTEM NAME: POLICE AND SECURITY RECORDS—VA.

SYSTEM LOCATION:

VA Police and Security personnel maintain electronic and paper records at VA facilities and VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420. Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of the VA systems of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans, VA police officers, Federal government employees, retirees, contractors, subcontractors, volunteers, and other individuals, including private citizens, who:

1. Have been a complainant, a witness, a victim, or a subject of an investigation of a violation or of an alleged violation of a law on VA property;

2. Have been a witness or a victim when there has been a VA police response to a report of a missing patient;

3. Have been witness to, or involved in, a motor vehicle accident on VA property;

4. Have been a witness, victim, or subject when there has been a VA police response to provide assistance to VA employees;

5. Have registered a motor vehicle with VA police;

6. Have had property confiscated by VA police or whose property has been given to VA police for safekeeping; or

7. For whom a VA identification card has been prepared.

CATEGORIES OF RECORDS IN THE SYSTEM:

Security and law enforcement records, containing specific identification of persons, can be found in electronic and/or paper medium:

1. Master Name Index contains demographic information (i.e., name, address, date of birth, sex) and descriptive information such as height, weight, hair color, eye color, and scars of marks.

2. Quick Name Check allows for the immediate retrieval of information based on a name from files contained within the law enforcement records subject to this system of records notice.

3. VA Police Uniform Offense Reports, Investigative Notes, Case Log, and other documentation assembled during an investigation. Uniform Offense Reports contain information of

all types of offenses and incidents, criminal and non-criminal, that occur at a facility and to which VA police respond (e.g., criminal investigations, investigative stops, patient and staff assistance calls, missing patient searches, and motor vehicle accidents).

4. All violation information and copies of U.S. District Court Violation Notices and Courtesy Warnings issued by VA police.

5. On-station vehicle registration records used for identifying vehicle owners at a facility.

6. Records pertaining to individuals with outstanding warrants, summons, court commitments, or other types of legal process.

7. Daily Operations Journal records include names and other personal identifying information of persons with whom VA police have had official, duty-related contact.

8. VA police officer training records.

9. Photographs of any and all persons and/or scenes pertinent to an incident or investigation.

10. Motor vehicle registrations.

11. Identification cards with photographic images for veterans, Federal government employees, retirees, volunteers, contractors, subcontractors, or private citizens.

12. Records of evidence, confiscated property, or property being held for safekeeping.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

United States Code (U.S.C.), Section 501 and Sections 901–905.

PURPOSE:

The records and information contained in this system of records are necessary for the effective administration and management of the Department's nationwide Police and Security program. The collection and use of accurate, up-to-date data is necessary for the purpose of enforcing the law and protecting persons and property on VA property and at VA Central Office. Examples: ID cards are used to visibly identify employees, contractors, students, and other designated individuals from the general public. ID cards also serve as a means of access control to the facility. Motor vehicle registration records serve to accurately identify the owner of a vehicle and the suitability of its presence on VA grounds. These records are also used for a VA facility's ride sharing program. Evidence or confiscated property records are used to accurately track and record the chain of custody maintained by the VA police.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office that is made at the request of that individual.

2. Disclosure may be made to the National Archives and Records Administration (NARA) in records management activities and inspections conducted under authority of Title 44 United States Code.

3. Disclosure may be made to DoJ and United States attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, Title 28 United States Code, Section 2672.

4. Any information in this system, except the name and address of a veteran, may be disclosed to a Federal, State, or local agency maintaining civil or criminal violation records or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational background in order for VA to obtain information relevant to the hiring, transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit. The name and address of a veteran may be disclosed to a Federal agency under this routine use of this information has been requested by the Federal agency in order to respond to the VA inquiry.

5. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

6. Information from this system of records may be disclosed to DoJ or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear when: the Agency, or any component thereof, or any employee of the Agency in his or her official capacity, where DoJ or the Agency has agreed to represent the employee or the U.S.; when the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation and has an interest in such litigation, and the use of such information by DoJ or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which the records were collected.

7. Information in this system regarding traffic accidents may be disclosed to private insurance companies for use in determining payment of a claim under a policy.

8. To assist attorneys in representing their clients, any information in this system may be disclosed to attorneys representing veterans, Federal government employees, retirees, volunteers, contractors, subcontractors, or private citizens being investigated and prosecuted for violating the law, except where VA has decided release is inappropriate under Title 5 United States Code, Section 552a(j) and (k).

9. Disclosure of information to FLRA, including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

10. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

11. Information may be disclosed to officials of the Merit Systems Protection Board, and the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, reviews of rules and regulations, investigation of

alleged or possible prohibited personnel practices, and such other functions, promulgated in Title 5 United States Code, Sections 1205 and 1206, or as may be authorized by law.

12. Disclosure may be made to the VA-appointed representative of an employee of all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

VA Police and Security Services maintain electronic and paper records at each VA facility and VA Central Office.

RETRIEVABILITY:

Information is retrieved by name or Social Security Number.

SAFEGUARDS:

Access to working areas where information is maintained in VA facilities and VA Central Office is controlled and restricted to VA employees and VA contractors on a need-to-know basis. Paper document files are locked in a secure container when files are not being used and when work area is not occupied. VA facilities are protected from outside access after normal duty hours by security personnel. Access to information on electronic media is controlled by individually unique passwords and codes. Computer access authorizations, computer applications available and used, information access attempts, frequency and time of use are recorded and monitored.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with the recorded disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Police and Security Service (07B), 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURES:

An individual who wishes to determine whether a record is being maintained under his or her name in this system or wishes to determine the contents of such records should submit a written request or apply in person to the VA facility where the records are located. VA facility location information can be found in the Facilities Locator section of VA's Web site at *http://www.va.gov.* A majority of records in this system are exempt from record access and amendment provisions of Title 5 United States Code, Sections 552a(j) and (k). To the extent that records in the system are not subject to exemption, individuals may request access and/or amendment. A determination as to whether an exemption applies shall be made at the tie a request for access or contest is received.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and amendment of records in this system may write, call or visit the VA facility where the records are maintained.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedure above).

RECORD SOURCE CATEGORIES:

Information is obtained from veterans, VA police officers, Federal government employees, retirees, volunteers, contractors, subcontractors, other law enforcement agencies, and private citizens.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under Title 5 United States Code, Section 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The function of the Police and Security Service is to provide for the maintenance of law and order and the protection of persons and property on Department property. This system of records has been created, in major part, to support the criminal law related activities assigned by the Department under the authority of Title 38 United States Code, Section 901 to the Police and Security Service. These activities constitute the principal function of this staff.

In addition to principal functions pertaining to the enforcement of criminal laws, the Police and Security Service may receive and investigate complaints or information from various sources concerning the possible existence of activities constituting noncriminal violations of law, rules, or regulations or substantial and specific danger to the public and safety.

Based upon the foregoing, the Secretary of Veterans Affairs has exempted this system of records, to the extent that it encompasses information pertaining to criminal law related activities from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(j)(2):

5 U.S.C. 552a(c) (3) and (4)
5 U.S.C. 552a(d) (1) through (4)
5 U.S.C. 552a(e) (1), (2) and (3)
5 U.S.C. 552a(e)(4) (G), (H) and (I)
5 U.S.C. 552a(e) (5) and (8)
5 U.S.C. 552a(f)
5 U.S.C. 552a(g)

The Secretary of Veterans Affairs has exempted this system of records, to the extent that it does not encompass information pertaining to criminal law related activities under 5 U.S.C. 552a(j)(2), from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(k)(2):

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d) (1) through (4)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4) (G), (H) and (I)
5 U.S.C. 552a(f)

Reasons for exemptions: The exemption of information and material in this system of records is necessary in order to accomplish the law enforcement functions of the Police and Security Service, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and Policy and Security personnel.

[FR Doc. 02–31709 Filed 12–18–02; 8:45 am]
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Corrections

Federal Register

Vol. 67, No. 244

Thursday, December 19, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-7385-7]

RIN 2060-AG57

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products

Correction

In proposed rule document 02–29073 beginning on page 72276 in the issue of Wednesday, December 4, 2002 make the following corrections:

§ 63.4561 [Corrected]

1. On page 72313, in §63.4561, in the second column, in the third equation, Equation 3A is corrected to read as set forth below.

$$A_{CSR} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 3A)}$$

2. On page 72314, in the same section, in the same column, in the second equation, Equation 3C is corrected to read as set forth below.

$$C_{CSR} = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 3C)}$$

[FR Doc. C2–29073 Filed 12–18–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
December 19, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0059; FRL—7417–9]

RIN 2060–AG–63

National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE) with manufacturer's nameplate rating above 500 brake horsepower located at major sources of hazardous air pollutants (HAP). We have identified stationary RICE as a major source category of HAP emissions such as formaldehyde, acrolein, methanol, and acetaldehyde. The proposed rule would implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT) for RICE. We estimate that 40 percent of stationary RICE will be located at major sources and thus subject to the proposed rule. As a result, the environmental, energy, and economic impacts presented in this preamble reflect these estimates. We estimate that the proposed rule would reduce nationwide HAP emissions from major stationary RICE by approximately 5,000 tons/year in the 5th year after the standards are implemented. The emissions reductions achieved by these standards will provide protection to the public and achieve a primary goal of the CAA.

DATES: *Comments.* Submit comments on or before February 18, 2003, or by February 20, 2003 if a public hearing is held.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by January 8, 2003, a public hearing will be held on January 21, 2003.

ADDRESSES: Comments may be submitted by mail (in duplicate, if possible) to EPA West (Air Docket), U.S. EPA (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0059. By hand delivery/courier, comments may be submitted (in duplicate, if possible) to EPA Docket Center (Air Docket), U.S. EPA, (MD–6102T), Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0059. Also, comments may be submitted electronically according to the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. OAR–2002–0059 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460 in room B108, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Sims Roy, Combustion Group, Emission Standards Division, (MD–C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5263; facsimile number (919) 541–5450; electronic mail address: roy.sims@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of regulated entities
Any industry using a stationary RICE as defined in the proposed rule.	4911	2211	Electric power generation, transmission, or distribution.
	4922	48621	Natural gas transmission.
	1311	211111	Crude petroleum and natural gas production.
	1321	211112	Natural gas liquids producers.
	9711	92811	National security.

This table is not intended to be exhaustive, but rather a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.6585 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0059. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B108, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. To the extent feasible, publicly available docket

materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. The EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments. However, late comments may be considered if time permits.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2002–0059. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2002–0059. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate if possible) to: Air and Radiation Docket and Information Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0059. The EPA requests a separate copy also be sent to the contact person listed above (see **FOR FURTHER INFORMATION CONTACT**).

By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, Room B108, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0059. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Mr. Sims Roy, c/o OAQPS Document Control Officer (Room C404–2), U.S. EPA, Research Triangle Park, 27711, Attention Docket ID No. OAR–2002–0059. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mrs. Kelly Hayes, Combustion Group, Emission Standards Division (MD–C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5578 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Mrs. Hayes to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information presented at a public hearing, if held.

Outline. The information presented in this preamble is organized as follows:

I. Background

A. What Is the Regulatory Development Background of the Source Category?

In September 1996, we chartered the Industrial Combustion Coordinated Rulemaking (ICCR) advisory committee under the Federal Advisory Committee Act (FACA). The committee's objective was to develop recommendations for regulations for several combustion source categories under sections 112 and 129 of the CAA. The ICCR advisory committee, also known as the Coordinating Committee, formed Source Work Groups for the various combustor types covered under the ICCR. One work group, the RICE Work Group, was formed to research issues related to stationary RICE units. The RICE Work Group submitted recommendations, information, and data analyses to the Coordinating Committee, which in turn considered them and submitted recommendations and information to EPA. The Committee's 2-year charter expired in September 1998. We considered the Committee's recommendations in developing the proposed rule for stationary RICE.

B. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The stationary RICE source category was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 ton/yr of any one HAP or 25 ton/yr of any combination of HAP. Most RICE engines or groups of RICE engines are not major HAP emission sources by themselves but are major because they are co-located at major HAP sites.

C. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing sources in regulated source categories. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standards are set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better controlled and lower emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in the category or subcategory (or the best performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of

cost of achieving the emissions reductions, any nonair quality health and environmental impacts, and energy requirements.

D. What Are the Health Effects Associated With HAP From Stationary RICE?

Emission data collected during development of the proposed NESHAP show that several HAP are emitted from stationary RICE. These HAP emissions are formed during combustion or result from HAP compounds contained in the fuel burned.

Hazardous air pollutants which have been measured in emission tests conducted on natural gas fired and distillate oil fired RICE include: 1,1,2,2-tetrachloroethane, 1,3-butadiene, 2,2,4-trimethylpentane, acetaldehyde, acrolein, benzene, chlorobenzene, chloroethane, ethylbenzene, formaldehyde, methanol, methylene chloride, n-hexane, naphthalene, polycyclic aromatic hydrocarbons, polycyclic organic matter, styrene, tetrachloroethane, toluene, and xylene. Metallic HAP from distillate oil fired stationary RICE that have been measured are: Cadmium, chromium, lead, manganese, mercury, nickel, and selenium.

Although numerous HAP may be emitted from RICE, only a few account for essentially all of the mass of HAP emissions from stationary RICE. These HAP are: Formaldehyde, acrolein, methanol, and acetaldehyde.

The hazardous air pollutant emitted in the largest quantities from stationary RICE is formaldehyde. Formaldehyde is a probable human carcinogen and can cause irritation of the eyes and respiratory tract, coughing, dry throat, tightening of the chest, headache, and heart palpitations. Acute inhalation has caused bronchitis, pulmonary edema, pneumonitis, pneumonia, and death due to respiratory failure. Long-term exposure can cause dermatitis and sensitization of the skin and respiratory tract.

Acrolein is a cytotoxic agent, a powerful lacrimating agent, and a severe tissue irritant. Acute exposure to acrolein can cause severe irritation or corrosion of the eyes, nose, throat, and lungs, with tearing, pain in the chest, and delayed-onset pulmonary injury with depressed pulmonary function. Chronic exposure to acrolein can cause skin sensitization and contact dermatitis. Acrolein is not considered carcinogenic to humans.

Humans are very sensitive to the toxic effects of methanol including formic acidaemia, metabolic acidosis, ocular toxicity, nervous system depression, blindness, coma, and death. A majority of the available information on methanol toxicity in humans is based on acute rather than long-term exposure. However, recent animal studies also indicate potential reproductive and developmental health consequences following exposure to methanol in both mice and primates. Methanol has not been classified with respect to carcinogenicity.

The health effects for acetaldehyde are irritation of the eye mucous membranes, skin, and upper respiratory tract, and a central nervous system (CNS) depressant in humans. Chronic exposure can cause conjunctivitis, coughing, difficult breathing, and dermatitis. Chronic exposure may cause heart and kidney damage, embryotoxicity, and teratogenic effects. Acetaldehyde is a probable carcinogen in humans.

We recently reviewed health effects associated with emissions of particulates from diesel engines in the context of regulating heavy duty motor vehicles and engines (66 FR 5001, January 18, 2001). Diesel particulate matter is not currently listed as a hazardous air pollutant for stationary sources under section 112 of the CAA and was not specifically reviewed under the proposed rule, though constituent parts of diesel particulate matter are subject to the proposed rule. We are continuing to review this issue in the context of regulating stationary internal combustion engines.

II. Summary of the Proposed Rule

A. Am I Subject to the Proposed Rule?

The proposed rule applies to you if you own or operate stationary RICE which are located at a major source of HAP emissions, except if your stationary RICE are all rated at or under 500 brake horsepower. A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

Section 112(n)(4) of the CAA requires that the aggregation of HAP for purposes of determining whether an oil and gas production facility is major or nonmajor be done only with respect to particular sites within the source and not on a total aggregated site basis. We incorporated the requirements of section 112(n)(4) of the CAA into our NESHAP for Oil and Natural Gas Production Facilities in subpart HH of 40 CFR part 63. As in subpart HH, we plan to aggregate HAP emissions for the purposes of determining a major HAP source for RICE only with respect to particular sites within an oil and gas production facility. The sites are called surface sites and may include a combination of any of the following equipment: glycol dehydrators, tanks which have potential for flash emissions, RICE and combustion turbines.

The standards proposed in the rule have specific requirements for all new or reconstructed stationary RICE and for existing spark ignition 4 stroke rich burn (4SRB) stationary RICE located at a major source of HAP emissions, except that stationary RICE with a manufacturer's nameplate rating of 500 brake horsepower or less are not addressed in the proposed rule. Stationary RICE which operate exclusively as emergency power/limited use units or which combust landfill gas or digester gas as primary fuel are subject only to initial notification requirements.

An emergency power/limited use unit means any stationary RICE that operates as a mechanical or electrical power source during emergencies, when the primary power source for a facility has been rendered inoperable by an emergency situation. One example is when electric power from the local utility is interrupted. Another example is to pump water in the case of fire or flood. Emergency power/limited use units include units that operate less than 50 hours per year in non-emergency situations, including certain peaking units at electric facilities or stationary RICE at industrial facilities.

With the exception of existing spark ignition 4SRB stationary RICE, other types of existing stationary RICE (*i.e.*, spark ignition 2 stroke lean burn (2SLB), spark ignition 4 stroke lean burn (4SLB), and compression ignition (CI)) located at a major source of HAP emissions are not subject to any specific requirement under the proposed rule.

Finally, the proposed rule does not apply to stationary RICE test cells/stands since these facilities will be covered by another NESHAP, subpart PPPPP of 40 CFR part 63.

B. What Source Categories and Subcategories Are Affected by the Proposed Rule?

The proposed rule covers new or reconstructed stationary RICE and existing spark ignition 4SRB stationary RICE. A RICE is any spark ignition or compression ignition reciprocating internal combustion engine. A stationary RICE is any RICE which is not mobile.

Stationary RICE differ from mobile RICE in that stationary RICE are not self-

propelled, are not intended to be propelled while performing their function, or are not portable or transportable as that term is identified in the definition of non-road engine at 40 CFR 89.2.

We divided the stationary RICE source category into four subcategories: (1) Emergency power/limited use units, (2) stationary RICE that combust landfill gas or digester gas as their primary fuel, (3) stationary RICE with a manufacturer's nameplate rating of 500 brake horsepower or less, and (4) other stationary RICE. We further divided the last subcategory into four subcategories: (1) 2SLB stationary RICE, (2) 4SLB stationary RICE, (3) 4SRB stationary RICE, and (4) CI stationary RICE.

We are specifically soliciting comments on creating a subcategory of limited use engines with a capacity utilization of 10 percent or less. This is further discussed in the ''Solicitation of Comments and Public Participation'' section of this preamble.

The proposed rule does not apply to stationary RICE test cells/stands since these facilities will be covered by another NESHAP, subpart PPPPP of 40 CFR part 63.

The proposed rule also does not apply to existing, new, or reconstructed stationary RICE located at an area source of HAP emissions. An area source of HAP emissions is a plant site that does not emit any single HAP at a rate of 10 tons (9.07 megagrams) or greater per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or greater per year. In addition, the proposed rule does not apply to stationary RICE with a manufacturer's nameplate rating of 500 brake horsepower or below. These engines have been discussed previously in this preamble.

C. What Are the Primary Sources of HAP Emissions and What Are the Emissions?

The primary sources of HAP emissions are exhaust gases from combustion of gaseous fuels and liquid fuels in stationary RICE. Formaldehyde, acrolein, methanol, and acetaldehyde are HAP that are present in significant quantities from stationary RICE.

D. What Are the Emission Limitations and Operating Limitations?

As the owner or operator of an affected source, you must do one of the following: (1) Each existing, new, or reconstructed 4SRB stationary RICE must comply with each emission limitation in Table 1(a) of proposed subpart ZZZZ, 40 CFR part 63, and each operating limitation in Table 1(b) of proposed subpart ZZZZ that apply, or (2) each new or reconstructed 2SLB or 4SLB stationary RICE or CI stationary RICE must comply with each emission limitation in Table 2(a) of proposed subpart ZZZZ and operating limitation in Table 2(b) of proposed subpart ZZZZ that apply.

Existing 2SLB or 4SLB stationary RICE or existing CI stationary RICE, stationary RICE that operate exclusively as emergency power/limited use units, or stationary RICE that combust digester gas or landfill gas as their primary fuel have an emission standard of no emission reduction, and will not be tested to meet any specific emission limitation or operating limitation. In addition, any stationary RICE located at an area source of HAP emissions, any stationary RICE that have a manufacturer's nameplate rating of 500 brake horsepower or less, or stationary RICE that are being tested at stationary RICE test cells/stands are not addressed in the proposed rule and, therefore, do not need to comply with any emission limitation or operating limitation.

E. What Are the Initial Compliance Requirements?

If your stationary RICE must meet specific emission limitations and operating limitations, then you must meet the following initial compliance requirements. The testing and initial compliance requirements are different, depending on whether you demonstrate compliance with the carbon monoxide (CO) emission reduction requirement, formaldehyde emission reduction requirement, or the requirement to limit the formaldehyde concentration in the stationary RICE exhaust.

1. If you own or operate a 2SLB or 4SLB stationary RICE, or a CI stationary RICE with a manufacturer's nameplate rating less than 5000 brake horsepower complying with the requirement to reduce CO emissions using a oxidation catalyst, you must install a continuous parameter monitoring system (CPMS) to continuously monitor the pressure drop across the catalyst and the catalyst inlet temperature. You must conduct an initial performance test to demonstrate that you are achieving the required CO percent reduction, corrected to 15 percent oxygen, dry basis. During the initial performance test, you must record the initial pressure drop across the catalyst and the catalyst inlet temperature.

2. If you own or operate a 2SLB or 4SLB stationary RICE, or a CI stationary RICE with a manufacturer's nameplate rating greater than or equal to 5000 brake horsepower complying with the requirement to reduce CO emissions using an oxidation catalyst, you must install a continuous emissions monitoring system (CEMS) to measure CO and either carbon dioxide or oxygen simultaneously at the inlet and outlet of the oxidation catalyst. To demonstrate initial compliance, you must conduct an initial performance evaluation using Performance Specifications (PS) 3 and 4A of 40 CFR part 60, appendix B. You must demonstrate that the reduction of CO emissions meets the required percent reduction using the first 4-hour average after a successful performance evaluation. Your measurements at the inlet and the outlet of the oxidation catalyst must be on a dry basis and corrected to 15 percent oxygen or equivalent carbon dioxide content.

3. If you own or operate a 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions using non-selective catalytic reduction (NSCR), you must install a CPMS to continuously monitor the pressure drop across the catalyst, the catalyst inlet temperature, and the temperature rise across the catalyst.

You must conduct an initial performance test to demonstrate that you are achieving the required formaldehyde percent reduction, corrected to 15 percent oxygen, dry basis. During the initial performance test, you must record the initial values of the pressure drop across the catalyst, the catalyst inlet temperature, and the temperature rise across the catalyst.

4. If you are complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust, you must conduct an initial performance test using Test Method 320 or 323 of 40 CFR part 63, appendix A, California Air Resources Board (CARB) Method 430, or EPA Solid Waste (SW)–846 Method 0011 to demonstrate that the concentration of formaldehyde in the stationary RICE exhaust is less than or equal to the emission limit, corrected to 15 percent oxygen, dry basis, that applies to you. To correct to 15 percent oxygen, dry basis, you must measure oxygen using Method 3A or 3B of 40 CFR part 60, appendix A, and measure moisture using Method 4 of 40 CFR part 60, appendix A. The initial performance test must be conducted at the lowest load at which you will operate your stationary RICE and at the typical load at which you will operate your stationary RICE. This initial performance test establishes the lowest load or the minimum fuel flow rate at which you may operate your stationary RICE.

To demonstrate initial compliance, you must also install a CPMS to continuously monitor stationary RICE load or fuel flow rate and other (if any)

operating parameters approved by the Administrator.

If you choose to comply with the emission limitation to limit the concentration of formaldehyde, you must also petition the Administrator for approval of additional operating limitations or approval of no additional operating limitations. If the Administrator approves your petition for additional operating limitations, the operating limitations must also be established during the initial performance test.

If you petition the Administrator for approval of additional operating limitations, your petition must include the following: (1) Identification of the specific parameters you propose to use as additional operating limitations; (2) a discussion of the relationship between the parameters and HAP emissions, identifying how HAP emissions change with changes in the parameters, and how limitations on the parameters will serve to limit HAP emissions; (3) a discussion of how you will establish the upper and/or lower values for the parameters which will establish the limits on the parameters in the operating limitations; (4) a discussion identifying the methods you will use to measure and the instruments you will use to monitor the parameters, as well as the relative accuracy and precision of the methods and instruments; and (5) a discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring the parameters.

If you petition the Administrator for approval of no additional operating limitations, your petition must include the following: (1) Identification of the parameters associated with operation of the stationary RICE and any emission control device which could change intentionally (*e.g.*, operator adjustment, automatic controller adjustment, etc.) or unintentionally (*e.g.*, wear and tear, error, etc.) on a routine basis or over time; (2) a discussion of the relationship, if any, between changes in the parameters and changes in HAP emissions; (3) for those parameters with a relationship to HAP emissions, a discussion of whether establishing limitations on the parameters would serve to limit HAP emissions; (4) for those parameters with a relationship to HAP emissions, a discussion of how you could establish upper and/or lower values for the parameters which would establish limits on these parameters in operating limitations; (5) for the parameters with a relationship to HAP emissions, a discussion identifying the methods you could use to measure the parameters and the instruments you could use to monitor them, as well as the relative accuracy and precision of the methods and instruments; (6) for the parameters, a discussion identifying the frequency and methods for recalibrating the instruments you could use to monitor them; and (7) a discussion of why, from your point of view, it is infeasible or unreasonable to adopt the parameters as operating limitations.

F. What Are the Continuous Compliance Provisions?

Several general continuous compliance requirements apply to all stationary RICE meeting various specified emission and operating limitations. If your stationary RICE is required to meet specific emission and operating limitations, then you are required to comply with the emission and operating limitations at all times, except during startup, shutdown, and malfunction of your stationary RICE. You must also operate and maintain your stationary RICE, air pollution control equipment, and monitoring equipment according to good air pollution control practices at all times, including startup, shutdown, and malfunction. You must conduct all monitoring at all times that the stationary RICE is operating, except during periods of malfunction of the monitoring equipment or necessary repairs or quality assurance or control activities, such as calibration checks.

1. For 2SLB and 4SLB stationary RICE and CI stationary RICE with a manufacturer's nameplate rating less than 5000 brake horsepower, complying with the requirement to reduce CO emissions using an oxidation catalyst, you must conduct quarterly performance tests for CO and oxygen using a portable CO monitor to demonstrate that the required CO percent reduction is achieved. To demonstrate continuous compliance with the CO percent reduction requirement, you must continuously monitor and record the pressure drop across the catalyst and the catalyst inlet temperature. The 4-hour rolling average of the valid data must be within the operating limitations. If you change your oxidation catalyst (*i.e.*, replace catalyst elements), you must reestablish your pressure drop and catalyst inlet temperature.

2. For 2SLB and 4SLB stationary RICE and CI stationary RICE with a manufacturer's nameplate rating greater than or equal to 5000 brake horsepower, complying with the CO percent reduction emission limitation using an oxidation catalyst, you must calibrate and operate your CEMS according to the requirements in 40 CFR 63.8. You must continuously monitor and record the CO concentration at the inlet and outlet of the oxidation catalyst and calculate the percent reduction of CO emissions hourly. The reduction of CO must be at least the required percent reduction, based on a rolling 4-hour average, averaged every hour. You must also conduct an annual relative accuracy test audit (RATA) of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B, as well as daily and periodic data quality checks in accordance with 40 CFR part 60, appendix F, procedure 1.

3. For existing, new, or reconstructed 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions using NSCR, you must demonstrate continuous compliance by continuously monitoring the pressure drop across the catalyst, the catalyst inlet temperature and the temperature rise across the catalyst.

The 4-hour rolling average of the valid data must be above and/or below the lower bounds and/or upper bounds of the operating parameters corresponding to compliance with the requirement to reduce formaldehyde emissions. If you change your NSCR (*i.e.*, replace catalyst elements), you must reestablish the values of the pressure drop across the catalyst, the catalyst inlet temperature and the temperature rise across the catalyst.

The 4SRB stationary RICE with a manufacturer's nameplate rating greater than or equal to 5000 brake horsepower must also conduct semiannual performance tests to demonstrate that the percent reduction for formaldehyde emissions is achieved. If you demonstrate compliance with the percent reduction requirement for two successive performance tests, you may reduce the frequency of performance testing to annually. However, if an annual performance test indicates a deviation from the percent reduction requirement, you must return to semiannual performance tests.

4. If you are complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust, the following requirements must be met:

a. Proper maintenance. At all times, the owner or operator shall maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

b. Continued operation. Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator

shall conduct all monitoring in continuous operation at all times that the unit is operating. Data recorded during monitoring malfunctions, associated repairs, out-of-control periods, and required quality assurance or control activities shall not be used for purposes of calculating data averages. The owner or operator shall use all the data collected during all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring equipment to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

To demonstrate continuous compliance with the operating limitations, you must continuously monitor and record the operating load or fuel flow rate of the stationary RICE, and the values of any other parameters which have been approved by the Administrator as operating limitations. The 4-hour rolling average of the operating load or fuel flow rate must be no lower than 5 percent below the operating limitations established during the initial performance test.

After completion of the initial performance test, you must demonstrate that formaldehyde emissions remain at or below the formaldehyde concentration limit by performing semiannual performance tests. If you demonstrate compliance with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust for two successive performance tests, you may reduce the frequency of performance testing to annually. However, if an annual performance test indicates a deviation of formaldehyde emissions from the formaldehyde concentration limit, you must return to semiannual performance tests. Also, if your stationary RICE will be operated at a load that is lower than the load at which you operated the stationary RICE during the initial performance test, you must conduct a performance test and reestablish the minimum values for the stationary RICE.

G. What Monitoring and Testing Methods Are Available To Measure These Low Concentrations of CO and Formaldehyde?

Continuous emissions monitoring systems are available which can accurately measure CO emissions at the low concentrations found in the exhaust of a stationary RICE following an oxidation catalyst emission control device. Our PS 4A of 40 CFR part 60, appendix B, for CO CEMS, however, has not been updated recently and does not reflect the performance capabilities of the systems. We are currently undertaking a review of PS 4 and 4A of 40 CFR part 60, appendix B, for CO CEMS, and in conjunction with this effort, we solicit comments on the performance capabilities of CO CEMS to accurately measure the low concentrations of CO experienced in the exhaust of a stationary RICE following an oxidation catalyst emission control device.

Similarly, our Fourier Transform Infrared (FTIR) test method, Method 320 of 40 CFR part 63, appendix A, CARB Method 430, as well as EPA SW–846 Method 0011 can be used to accurately measure formaldehyde concentrations in the exhaust of a stationary RICE as low as 350 parts per billion by volume, dry basis (ppbvd). Similar to our current performance specifications for CO CEMS, as both of these test methods are currently written, they do not provide for this level of accuracy. The methods must be used with some revisions to achieve such accuracy.

As a result, we are currently undertaking a review of our FTIR method, Method 320 of 40 CFR part 63, appendix A, to incorporate revisions to ensure it can be used to accurately measure formaldehyde concentrations as low as 8 ppbvd in the exhaust from a stationary RICE. In conjunction with this effort, we solicit comments on revisions to Method 320 of 40 CFR part 63, appendix A, to ensure accurate measurement of such low concentrations of formaldehyde.

In addition, we are also proposing another EPA method for measuring formaldehyde from natural gas-fired stationary RICE. This impinger-based method, EPA Method 323 of 40 CFR part 63, appendix A, Measurement of Formaldehyde Emissions From Natural Gas-fired Stationary Sources—Acetyl Acetone Derivitization Method, may be an acceptable method for measuring low concentrations as required by the proposed rule.

H. What Are the Notification, Recordkeeping and Reporting Requirements?

If you own or operate a stationary RICE which is located at a major source of HAP emissions, you must submit all of the applicable notifications as listed in the NESHAP General Provisions (40 CFR part 63, subpart A), including an initial notification, notification of performance test or evaluation, and a notification of compliance for each stationary RICE which must comply with the specified emission and operating limitations. In addition, you must submit an initial notification for each stationary RICE which operates exclusively as an emergency power/limited use unit or a stationary RICE which combusts digester gas or landfill gas as primary fuel.

You must record all of the data necessary to determine if you are in compliance with the emission limitations and operating limitations (if applicable) as required by the proposed rule. Your records must be in a form suitable and readily available for review. You must also keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. Records must remain on site for at least 2 years and then can be maintained offsite for the remaining 3 years.

You must submit a compliance report semiannually. This report should contain information including company name and address, a statement by a responsible official that the report is accurate, and a statement of compliance or documentation of any deviation from the requirements of the proposed rule during the reporting period.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category and Any Subcategories?

Stationary RICE are listed as a major source category for regulatory development under section 112 of the CAA. The CAA allows us discretion in defining the appropriate scope of the category and subcategories. We considered several criteria associated with stationary RICE which could lead to establishment of subcategories including differences in emission characteristics, fuel, mode of operation, size of source, and type of source.

We identified four subcategories of stationary RICE located at major sources: (1) Emergency power/limited use units, (2) stationary RICE which combust landfill gas or digester gas as their primary fuel, (3) stationary RICE with a manufacturer's rating of 500 brake horsepower or less, and (4) other stationary RICE.

We identified emergency power/limited use units as a subcategory. Emergency power/limited use units operate only in emergencies, such as a loss of power provided by another source. These types of stationary RICE operate infrequently and, when called upon to operate, must respond without failure and without lengthy periods of startup. These conditions limit the

applicability of HAP emission control technology to emergency power/limited use units.

Similarly, stationary RICE which combust landfill gas or digester gas as their primary fuel were identified as a subcategory. Landfill and digester gases contain a family of chemicals referred to as siloxanes, which limits the application of HAP emission control technology.

Stationary RICE with a manufacturer's nameplate rating of 500 brake horsepower or less were also identified as a subcategory. We know very little about these stationary RICE and without further knowledge have concerns about the applicability of HAP emission control technology to them. As discussed above, we have not addressed these stationary RICE in the proposed rule.

Finally, in considering the fourth subcategory (*i.e.*, other stationary RICE located at major sources of HAP emissions), we identified four additional subcategories of stationary RICE within this fourth subcategory: (1) 2SLB stationary RICE, (2) 4SLB stationary RICE, (3) 4SRB stationary RICE, and (4) CI stationary RICE. The further subcategorization is necessary because engine design characteristics, HAP emissions, and the application of HAP emission control technology differ among the subcategories. For further information on our rationale for subcategorization, see the memorandum entitled ''Subcategorization of Stationary Reciprocating Internal Combustion Engines for the Purpose of NESHAP'' in the docket.

Stationary RICE being tested at stationary RICE test cells/stands are not covered by the proposed rule since they will be covered by a separate NESHAP, subpart PPPPP of 40 CFR part 63.

B. What Is the Affected Source?

The affected source for the proposed rule is any stationary RICE located at a major source of HAP emissions with a manufacturer's nameplate rating above 500 brake horsepower and not being tested at a stationary RICE test cell/stand.

C. How Did We Determine the Basis and Level of the Proposed Emission Limitations and Operating Limitations?

1. Overview

As established in section 112(d) of the CAA, the emission standards must be no less stringent than the MACT floor, which for existing sources is the average emission limitation achieved by the best performing 12 percent of existing sources. The MACT floor for new sources must be no less stringent than the level of emission control that is achieved in practice by the best controlled similar source. As outlined below, the MACT floors and MACT for existing and new stationary RICE were developed primarily through analyses of the population database and the emissions database.

The population database provides population information on operating stationary RICE in the United States and was constructed to support the proposed rule. The population database contains information from available databases, such as the Aerometric Information Retrieval System, the Ozone Transport and Assessment Group, and State and local agencies' databases. The first version of the database was released in 1997. Subsequent versions have been released reflecting additional or updated data. The most recent release of the database is version 4, released in November 1998.

The population database contains information on approximately 28,000 stationary RICE. We believe the current stationary RICE population is about 37,000, including those under 500 horsepower and those at area sources, therefore, we believe the population database represents about 75 percent of the stationary RICE in the United States. As a result, we believe the information in the population database is representative of the stationary RICE industry subject to the proposed rule.

The emissions database is a compilation of available HAP emission test reports created to support the proposed rule. The majority of HAP emission test reports were conducted in the State of California as part of the Air Toxics ''Hot Spots'' Information Assessment Act of 1987 program. Complete copies of HAP emission test reports for stationary RICE were gathered from air districts in California and taken from a previous EPA effort referred to as the Source Test Information Retrieval System. Other States and trade associations such as Western States Petroleum Association and Gas Research Institute (GRI) were contacted for available HAP emission test reports. Finally, the emissions database also includes preliminary results from a joint EPA-industry HAP emission testing program on stationary RICE at the Engines and Energy Conversion Laboratory at Colorado State University (CSU).

2. General

We considered several approaches to identify MACT floors for stationary RICE. One approach was to review State regulations and permits for stationary RICE. We found no State regulations or State permits which specifically limit HAP emissions from stationary RICE.

Another approach we considered to identify MACT floors for stationary RICE was that of good combustion practices. We tried to identify specific practices which might be considered improved maintenance or operation, such as frequent checks or tune ups, which serve to maintain a stationary RICE in good operating condition. We thought the use of such practices might prevent increases in HAP emissions which could arise from poor operation or failure of a stationary RICE.

Toward that end, we contacted State and local permitting authorities, as well as the manufacturers and the owners and operators of stationary RICE. A more detailed discussion is presented in ''Pollution Prevention for Reciprocating Internal Combustion Engines'' in the docket. We were unable to identify any specific good combustion practices from these efforts which we could relate directly to reduced HAP emissions.

As mentioned above, the primary approach we ultimately used to identify MACT floors and MACT was to review information in the population and emissions databases. We reviewed the information in the databases to identify stationary RICE operating with emission control systems and then to identify the level of performance, in terms of HAP emissions reductions, associated with the use of the emission control systems.

We reviewed MACT floors and MACT for the four subcategories separately. The MACT for emergency power/limited use units and landfill/digester gas units are discussed later in this preamble. As discussed above, we did not address engines with manufacturer's nameplate ratings at or below 500 brake horsepower in the proposed rule nor do we address stationary RICE that are tested at stationary RICE test cells/stands. The MACT for other stationary RICE are discussed below.

We found several stationary RICE operating with oxidation catalyst systems and several operating with NSCR systems. Oxidation catalyst systems have been installed primarily to reduce CO emissions and, to some extent, volatile organic compounds (VOC) emissions, from 2SLB and 4SLB stationary RICE and CI stationary RICE. Non-selective catalytic reduction systems, on the other hand, have been installed primarily to reduce nitrogen oxides (NO_X) emissions from 4SRB stationary RICE.

Examination of HAP emission data from the emissions database, as well as preliminary emission data from HAP emission testing at CSU leads us to

conclude that oxidation catalyst systems will reduce HAP emissions from 2SLB and 4SLB stationary RICE and CI stationary RICE, as discussed further below. Similarly, examination of HAP emission data leads us to conclude that NSCR will reduce HAP emissions from 4SRB stationary RICE.

3. Existing Source MACT Floor for Other Stationary RICE Subcategory

As mentioned in the previous section, MACT floors for existing RICE could not be established based on State and local permit information because there are no State or local regulations for RICE regarding HAP and the use of good operating practices because no operating practices could be specifically linked to HAP emissions reductions.

Review of the population database indicates that few existing 2SLB and 4SLB stationary RICE or CI stationary RICE use oxidation catalyst systems. The number is less than 1 percent for 2SLB stationary RICE, about 3 percent for 4SLB stationary RICE, and less than 1 percent for CI stationary RICE. In addition, less than 1 percent of existing CI stationary RICE use a catalyzed diesel particulate filter (C–DPF), which is believed to reduce HAP emissions to some extent. However, all of these percentages are well below the criteria for a MACT floor that would require emissions reductions for existing sources (average emission limitation achieved by the best performing 12 percent of existing sources). We have interpreted average emission limitation of the best performing 12 percent to refer to either the numerical mean or the numerical median. In this case, EPA has used the median value, that is, the level of control at the 6th (best performing) percentile to determine the average. Thus, we conclude the MACT floor for existing 2SLB, 4SLB, and CI stationary RICE is no emissions reductions.

Unlike the situation outlined above, more than 6 percent of existing 4SRB stationary RICE use NSCR systems. Therefore, we conclude the MACT floor for 4SRB existing stationary RICE is the level of HAP emissions reductions achieved by the use of NSCR systems. We discuss this in more detail below.

4. Existing Source MACT

To determine MACT for the subcategories of existing 2SLB and 4SLB stationary RICE and existing CI stationary RICE, we evaluated two regulatory alternatives more stringent than the MACT floor. Specifically, we considered the use of oxidation catalyst systems as a beyond-the-floor regulatory alternative and fuel switching. With one exception noted below, these are the only options we know of which could serve as the basis for MACT to reduce HAP emissions from the subcategories of stationary RICE.

In our review of oxidation catalyst systems, we concluded that this alternative would be inappropriate given the cost per ton of HAP removed. Non-air quality health, environmental impacts, and energy effects were not significant factors.

The second option considered was to switch fuels in existing RICE from fuels which result in higher HAP emissions to fuels that result in lower HAP emissions. When we compared the CAA section 112 HAP emissions factors of the various fuels from RICE, using the July 2000 revision of Chapter 3.2 (Natural Gas Fired Reciprocating Internal Combustion Engines) and the October 1996 revision of Chapter 3.3 (Gasoline and Diesel Industrial Engines) of ''Compilation of Air Pollutant Emission Factors AP–42, Fifth Edition, Volume 1: Stationary Point and Area Sources,'' we could not find a fuel that was clearly less HAP emitting. The summation of emission factors for various HAP when using natural gas (usually considered the cleanest fuel) or diesel fuel were comparable based on the emission factor information that is available. Therefore, we could find no basis to consider fuel switching as a beyond-the-floor HAP emissions reductions option.

For existing compression ignition stationary RICE, we also considered another beyond-the-floor regulatory alternative, the use of C–DPF. Some believe the use of such filters will reduce HAP emissions; however, there are no data available to quantify what the level of the reduction might be. Most speculate that it is less than that achieved through the use of oxidation catalyst systems. The cost of C–DPF, however, is greater than that of oxidation catalyst systems and, for that reason, we consider the alternative to also be inappropriate as well. Non-air quality health, environmental impacts, and energy effects were not significant factors.

We conclude, therefore, that MACT for existing 2SLB and 4SLB stationary RICE and existing CI stationary RICE is the MACT floor (*i.e.*, no emissions reductions). As a result, we propose no requirements for emissions testing for existing 2SLB and 4SLB stationary RICE and existing CI stationary RICE. For further information on the determination of MACT, refer to the Regulatory Impact Analysis for the proposed rule and memoranda entitled ''Regulatory Alternatives and MACT for Stationary Reciprocating Internal Combustion Engines'' and ''National Impacts Associated with Reciprocating Internal Combustion Engines'' in the docket.

For 4SRB stationary RICE, we know of no other HAP emission control technology other than the use of NSCR systems. The fuel switching analysis presented previously also applies to existing 4SRB RICE. Therefore, we are unable to identify any beyond-the-floor regulatory alternative for this subcategory of stationary RICE. Consequently, we conclude that MACT for existing 4SRB stationary RICE is also equivalent to the MACT floor (*i.e.,* the level of HAP emission control achieved through the use of NSCR systems).

To determine the level of performance associated with the use of NSCR systems on 4SRB stationary RICE, we examined HAP emission data from the emissions database. We also examined a recent industry sponsored formaldehyde emission test conducted on two 4SRB stationary RICE equipped with NSCR.

Emission testing to measure HAP emitted from stationary RICE is very expensive, and we know of no CEMS which could be used to continuously monitor all HAP emissions. As a result, we first examined the emission data mentioned above to determine if a single pollutant could serve as a surrogate for HAP emissions.

We focused on CO emissions initially because CO is easy to measure. In addition, CEMS for CO emissions are readily available and, in most cases, the costs associated with their use are considered reasonable. Unfortunately, there is not a good relationship between CO emission concentration or CO emissions reductions and HAP emissions concentrations or HAP emissions reductions from 4SRB stationary RICE equipped with NSCR. Thus, CO emission concentration and CO emission reduction cannot serve as surrogates for HAP emissions for 4SRB stationary RICE.

Next, we considered the use of formaldehyde concentration as a surrogate for all HAP emissions. Formaldehyde is the hazardous air pollutant present in the highest concentrations in emissions from 4SRB stationary RICE and, more importantly, the level of formaldehyde emissions are related to the level of other HAP emissions. When formaldehyde emissions are reduced through the use of NSCR systems, HAP emissions are reduced as well. Consequently, we conclude that reductions in formaldehyde emissions can serve as a surrogate for reductions in HAP emissions for 4SRB stationary RICE operating with NSCR systems.

The emissions database contains several emission test reports that measured formaldehyde emissions from 4SRB stationary RICE equipped with NSCR, but no tests measure the emissions both before and after the control device, so the control efficiency of NSCR systems could not be determined from the emissions database. Moreover, the test reports in the emissions database provide single snapshot emission readings from stationary RICE, which does not account for variability of emissions that may occur as engines are operated in actual use. The data, for example, provided little or no information regarding variable parameters such as timing and load. As a result, we examined data from an industry sponsored formaldehyde emission test conducted on two 4SRB stationary RICE equipped with NSCR to determine the level of performance of NSCR systems. These test reports were reviewed, and we concluded that the engines and control devices were operated correctly during the tests and the tests were conducted properly. We considered several factors, such as load, which could have an effect on the efficiency of the control device, but could find no reason for the variability of the test results between the two engines.

We selected the best performing engine based on the highest average formaldehyde percent reduction. The average reduction was 79 percent for that engine; however, to establish variability, we looked at each of the 12 individual test runs performed on that engine. The percent reduction varied from 75 percent to 81 percent. We selected 75 percent for the MACT floor, which takes into account the variability of the best performing engine. The HAP emission data outlined above show that the use of NSCR systems on 4SRB stationary RICE will reduce formaldehyde emissions by 75 percent or more. As a result, we propose a 75 percent or more reduction in formaldehyde emissions as the emission limitation for existing 4SRB stationary RICE.

For existing 4SRB engines that choose to use a control or reduction technology that is not an NSCR system, an alternative standard was developed based on a formaldehyde concentration limit. For existing 4SRB engines the alternative emission limitation is 350 ppbvd corrected to 15 percent oxygen. The alternative formaldehyde concentration limit standard is discussed in more detail below.

5. New Source MACT Floor

Several existing 2SLB and 4SLB stationary RICE and existing CI stationary RICE currently operate with oxidation catalyst systems. No technology achieving greater emissions reductions was found. Thus, we conclude the MACT floor for new 2SLB and 4SLB stationary RICE and new CI stationary RICE is the level of HAP emission control achieved through the use of oxidation catalyst systems. The level of HAP reductions achieved through oxidation catalysts differs for each of the subcategories as discussed in more detail below.

Again, for new compression ignition stationary RICE, we considered whether the use of C–DPF might be the basis for the MACT floor. However, since oxidation catalyst systems achieve greater HAP emissions reductions, we concluded that oxidation catalyst systems, not C–DPF, are the basis for the MACT floor for new compression ignition stationary RICE.

As mentioned earlier, a number of existing 4SRB stationary RICE use NSCR systems. As a result, the use of NSCR systems is the best performing technology identified for use by 4SRB stationary RICE. Consequently, we conclude the MACT floor for new 4SRB stationary RICE is the level of HAP emissions reductions achieved through the use of NSCR systems.

6. New Source MACT

For 2SLB and 4SLB stationary RICE and CI stationary RICE, we know of no other HAP emission control technology than the use of oxidation catalyst systems (other than possibly the use of C–DPF on compression ignition stationary RICE, as discussed earlier). The fuel switching analysis presented previously also applies to new 2SLB, 4SLB, and CI RICE. Therefore, we were unable to identify any beyond-the-floor regulatory alternative for these subcategories of stationary RICE. Consequently, we conclude that MACT for new 2SLB and 4SLB stationary RICE and new CI stationary RICE is equivalent to the MACT floor (*i.e.*, the level of HAP emission control achieved through the use of oxidation catalyst systems).

Although the basis for MACT for each of these subcategories of stationary RICE is the same, as outlined below, HAP emission data from the emissions database and preliminary emission data from the HAP emission testing program at CSU indicate that the level of performance achieved by oxidation catalyst systems on each of these subcategories of stationary RICE differ. As a result, we propose different emission limitations for each of these subcategories of new stationary RICE.

As mentioned above, emission testing to measure HAP emissions is expensive, and we know of no CEMS which could be used to continuously monitor all HAP emissions. As a result, we first examined the emission data to determine if a single pollutant could serve as a surrogate for HAP emissions.

Again, we focused on CO emission concentration and CO emissions reductions initially. In this case, we found that there is a good relationship between CO emissions reductions and HAP emissions reductions from 2SLB and 4SLB stationary RICE and CI stationary RICE equipped with oxidation catalyst systems. When CO emissions are reduced, HAP emissions are reduced in a relatively proportional manner. As a result, CO emissions reductions can serve as a surrogate for HAP emissions reductions for 2SLB and 4SLB stationary RICE and CI stationary RICE operating with oxidation catalyst systems.

A joint EPA-industry HAP emission testing program at CSU provided HAP and CO emissions data which form the basis for the MACT floor and MACT for 2SLB, 4SLB, and CI stationary RICE. A single engine of each type equipped with an oxidation catalyst control system was tested. The engines were all overhauled before the testing and were expected to operate as well as new engines. The oxidation catalyst control systems represented the best HAP emission control known for each type of engine. All catalyst systems were new but were operated for a number of hours until the CO percent reduction stabilized. This assured that the performance would be not overestimated by the use of a new catalyst. Prior to the testing, EPA and industry developed a list of engine operating parameters that were known to vary throughout the U.S. for each type of engine. The engines and control devices were tested at typical engine conditions in which these operating parameters were varied. The variations in the emission reduction results for each engine type are due to the variability of the engine and control system and include a representation of the performance of the best controlled source for new engines. The fluctuations in HAP emission control represent the variability inherent in operating the engine and control device combination under various conditions. Some parameters such as the exhaust temperature are an important determinate of the catalytic activity and resulting emissions reductions but

cannot be controlled by the operator because they are a result of factors such as engine design, ambient temperature, and designed air-to-fuel ratio. These result in a significant source of variability that cannot be controlled.

The HAP emission data mentioned above show that the use of oxidation catalyst systems on 2SLB and 4SLB stationary RICE and CI stationary RICE will reduce uncontrolled CO emissions by 60 percent or more, 93 percent or more, and 70 percent or more, respectively, taking into account the variability of results achieved when tested under various operating parameters. As a result, we propose: (1) A 60 percent or more reduction in CO uncontrolled emissions as the emission limitation for new 2SLB stationary RICE, (2) a 93 percent or more reduction in CO emissions as the emission limitation for new 4SLB stationary RICE, and (3) a 70 percent or more reduction in CO emissions as the emission limitation for new CI stationary RICE. The variation in percent reduction of CO achieved between 2SLB stationary RICE and 4SLB stationary RICE is a result of the higher exhaust temperatures for 4SLB stationary RICE. The 2SLB stationary RICE tested at CSU had an average exhaust temperature of 530 degrees Fahrenheit, while the 4SLB stationary RICE had an average exhaust temperature of 691 degrees Fahrenheit. In general, higher exhaust temperatures lead to better catalyst performance. This difference in temperatures is a function of the inherent design of these engine types and cannot be controlled by the operator.

For 4SRB stationary RICE, we know of no other HAP emission control technology than the use of NSCR systems. The fuel switching analysis presented previously also applies to new 4SRB RICE. As a result, we were unable to identify any beyond-the-floor regulatory alternative. Consequently, we conclude that MACT for new 4SRB stationary RICE is equivalent to the MACT floor (*i.e.,* the level of HAP emission control achieved through the use of NSCR systems).

The basis for MACT for new 4SRB stationary RICE, therefore, is the same as that for existing 4SRB stationary RICE. We believe NSCR systems will achieve the same level of performance on existing as well as new 4SRB stationary RICE. Consequently, we propose the same emission limitation for both existing and new 4SRB stationary RICE (*i.e.,* 75 percent or more reduction in formaldehyde emissions).

For new 4SRB engines that choose to use a control or reduction technology that is not an NSCR system, and for new 2SLB, 4SLB, and CI engines that choose a control or reduction technology that is not an oxidation catalyst system, an alternative standard was developed based on formaldehyde concentration limits. The alternative emission limits for new RICE sources are: 17 parts per million by volume dry basis (ppmvd) formaldehyde for 2SLB engines, 14 ppmvd formaldehyde for 4SLB engines, 350 ppbvd formaldehyde for 4SRB engines, and 580 ppbvd formaldehyde for CI engines, all corrected to 15 percent oxygen. The alternative formaldehyde concentration limit standard is discussed in more detail below.

7. MACT Floor and MACT for Other Subcategories

Although the proposed rule applies to all stationary RICE with a manufacturer's nameplate rating above 500 brake horsepower located at major sources excluding stationary RICE being tested at stationary RICE test cells/stands, there are two subcategories of stationary RICE for which the appropriate emission standard is no emissions reductions; therefore, they would not be required to comply with any emissions limitations or operating limitations under the proposed rule. These subcategories are stationary RICE which combust digester or landfill gas as the primary fuel and emergency power/limited use stationary RICE.

a. Stationary RICE Combusting Digester or Landfill Gas

Examination of the population database shows that there are no stationary RICE burning digester gas or landfill gas as the primary fuel operating with emission control technologies which reduce HAP emissions. Therefore, we conclude the MACT floor for the subcategory is no emissions reductions for both existing as well as new stationary RICE.

We considered the applicability of HAP emission control technology, such as the use of an oxidation catalyst system for example, to this subcategory of stationary RICE for beyond-the-floor controls. However, digester gases and landfill gases contain a family of silicon based compounds called siloxanes. Combustion of siloxanes can foul post combustion catalysts, rendering them inoperable within a short period of time. We considered pretreatment systems to remove siloxanes from the gases prior to combustion; however, we found no pretreatment systems in use and the long-term effectiveness is unknown. As a result, we know of no emission control technology which could be applied to the subcategory of stationary RICE to reduce HAP emissions.

We also considered fuel switching for this subcategory of RICE. Switching to a different fuel such as natural gas or diesel would potentially allow the RICE to apply the MACT controls. However, fuel switching would defeat the purpose of these units, which are intended to use this type of fuel. Fuel switching would also cause the landfill/digester gas either to escape uncontrolled or to be burned in a flare with no energy recovery. We believe that switching landfill or digester gas to another fuel is inappropriate and is an environmentally inferior option.

For that reason, we were unable to identify a beyond-the-floor regulatory alternative for either existing or new stationary RICE combusting digester gases or landfill gases as the primary fuel. Consequently, we conclude that MACT for the subcategory of stationary RICE is the MACT floor (*i.e.*, no emissions reductions). Thus, we propose no requirements for emissions testing for stationary RICE which combust landfill gases or digester gases as the primary fuels.

b. Emergency Power/Limited Use Stationary RICE

Emergency power/limited use stationary RICE operate only in emergencies when the normal source of power at a facility fails. Based on our review of the population database, there are no emergency power/limited use stationary RICE which operate with HAP emission control technology. Thus, we conclude the MACT floor for the subcategory is no emissions reductions for both existing as well as new stationary RICE.

As with stationary RICE burning digester gases or landfill gases, we also have a number of concerns regarding the applicability of HAP emission control technology to emergency power/limited use stationary RICE. Emergency power/limited use stationary RICE operate infrequently but when called upon to operate, they must respond immediately without fail and without lengthy startup periods. Under such conditions, we have doubts whether HAP emission control technology, such as the use of oxidation catalyst systems, would effectively reduce HAP emissions.

Despite the concerns, we examined the cost per ton of HAP removed for emergency power/limited use stationary RICE as a beyond-the-floor regulatory alternative. Whether our concerns are warranted or not, we consider the cost per ton of HAP removed for the alternative unreasonable, primarily because of the very small reductions in

HAP emissions which might be achieved. Non-air quality health, environmental impacts, nor energy effects were significant factors.

For all of the reasons listed above, we conclude that MACT for both existing as well as new emergency power/limited use stationary RICE is the MACT floor (*i.e.*, no emissions reductions). Consequently, we propose no requirements for emissions testing for emergency power/limited use stationary RICE.

D. Why Does the Proposed Rule Not Apply to Stationary RICE of 500 Brake Horsepower or Less?

In reviewing the population database to identify stationary RICE with a manufacturer's nameplate rating of 500 brake horsepower or less, we found extremely little information. In discussions with State and local permitting officials, the manufacturers, and some of the owners and operators of stationary RICE, we found that such small stationary RICE have generally not been regarded as significant sources of air pollutant emissions. As a result, the small stationary RICE have not been subjected to the same level of scrutiny, examination, or review as larger stationary RICE. Little information has been gathered or compiled by anyone for this subcategory of stationary RICE.

Thus, at this point, we know very little about stationary RICE with a manufacturer's nameplate rating of 500 brake horsepower or less. For example, we do not know how many of the small stationary RICE exist. In addition, we know little about the operating characteristics and emissions, the current use of, as well as the applicability of, emission control technologies, the costs of emission control for the small stationary RICE, or the economic impacts and benefits associated with regulation. In the absence of such information, we have concerns with the applicability of HAP emission control technology to these stationary RICE. As a result, we believe it is appropriate to defer a decision on regulation of stationary RICE with a manufacturer's nameplate rating of 500 brake horsepower or less until further information on the engines can be obtained and analyzed.

We believe this subcategory of stationary RICE is likely to be more similar to stationary RICE located at area sources than to stationary RICE located at major sources. Thus, we plan to include this subcategory of stationary RICE in our considerations to develop regulations for stationary RICE located at area sources.

E. Why Does the Proposed Rule Not Apply to Stationary RICE Located at Area Sources?

The proposed rule does not apply to stationary RICE located at area sources. In developing our Urban Air Toxics Strategy (64 FR 38706, July 19, 1999), we identified stationary RICE at area sources as a category which would be subject to standards to protect the environment and the public health and satisfy the statutory requirements in section 112 of the CAA pertaining to area sources.

We are not setting standards at this time, because of insufficient information regarding the operating characteristics and the emissions, the current use of, as well as the applicability of, emission control technologies to stationary RICE at area sources, the costs of emission control for such stationary RICE, and the economic impacts and benefits associated with regulation of the stationary RICE.

F. How Did We Select the Format of the Standards?

1. CO Percent Reduction Standard

We are proposing a CO percent reduction standard if you use an oxidation catalyst to reduce HAP emissions from new or reconstructed 2SLB and 4SLB stationary RICE and CI stationary RICE. A control efficiency for CO was chosen because CO control is a surrogate for HAP control for 2SLB and 4SLB stationary RICE and CI stationary RICE, and because it is easier to monitor CO than several HAP.

2. Formaldehyde Percent Reduction Standard

We are proposing a formaldehyde percent reduction standard if you use NSCR to reduce HAP emissions from existing, new, and reconstructed 4SRB stationary RICE. A control efficiency for formaldehyde was chosen because formaldehyde control is a surrogate for HAP control for 4SRB stationary RICE, and because a good relationship was not found between CO emissions reductions and HAP emissions reductions for 4SRB stationary RICE.

3. Formaldehyde Concentration Limit

We are also proposing alternative emission limitations to limit the concentration of formaldehyde in the stationary RICE exhaust for new 2SLB, 4SLB, and CI engines not using oxidation catalyst control systems and for existing and new 4SRB engines not using NSCR control systems.

If you own or operate a 2SLB or 4SLB stationary RICE or a CI stationary RICE using an oxidation catalyst, you must comply with the CO percentage emission limitation. If you use some means other than an oxidation catalyst, you must comply with the alternative emission limitation to limit the concentration of formaldehyde in the stationary RICE exhaust.

If you own or operate a 4SRB stationary RICE using NSCR, you must comply with the formaldehyde percentage emission limitation. If you use some means other than NSCR, you must comply with the alternative emission limitation to limit the concentration of formaldehyde in the stationary RICE exhaust.

As mentioned earlier, we know of no other emission control technology other than oxidation catalyst and NSCR systems which can be used to reduce HAP emissions from stationary RICE. However, we would like to promote the development and eventual use of alternative emission control technologies to reduce HAP emissions, and we believe alternative emission limitations written as formaldehyde concentration limits will serve to do so.

For the alternative emission limitation, we propose to use formaldehyde concentration as a surrogate for all HAP. Formaldehyde is the hazardous air pollutant emitted in the highest concentrations from stationary RICE. In addition, the emission data show that formaldehyde emission levels and other HAP emission levels are related, in the sense that when emissions of one are lowered, emissions of the other are lowered. That leads us to conclude that emission control technologies which lead to reductions in formaldehyde emissions will lead to reductions in other HAP emissions.

The alternative emission limitation is in units of parts per billion by volume or parts per million by volume, and all measurements are corrected to 15 percent oxygen, dry basis, to provide a common basis. A volume concentration was chosen for these emission limitations to limit the concentration of formaldehyde in the stationary RICE exhaust because it can be measured directly.

We utilized the same data used to establish the percent reduction requirements to determine the alternative emission limitation for each subcategory. As with the control efficiencies discussed previously, the concentrations for the formaldehyde emission limitations are based on the minimum level of control achieved by the best controlled source for each type of engine. This approach takes into account the variability of the best performing engine. For the 2SLB engine tested at CSU, the controlled

formaldehyde emissions ranged from 7.5 parts per million (ppm) to 17 ppm; therefore, we selected 17 ppm for the emission limitation. The controlled formaldehyde emissions for the 4SLB engine tested at CSU ranged from 6.4 ppm to 14 ppm. We chose the highest controlled level of 14 ppm for the alternative standard for the 4SLB subcategory. Similarly, for the CI engine tested at CSU, the controlled formaldehyde emissions ranged from 130 to 580 parts per billion (ppb), and we, therefore, set an emission limitation of 580 ppb for the CI subcategory. For 4SRB engines, we chose the best performing engine from the industry testing. The controlled formaldehyde emissions for this engine ranged from 330 to 350 ppb.

In summary, the alternative emission limitations are: 17 ppmvd for 2SLB stationary RICE; 14 ppmvd for 4SLB stationary RICE; 350 ppbvd for 4SRB stationary RICE; and 580 ppbvd for CI stationary RICE, all corrected to 15 percent oxygen.

G. How Did We Select the Initial Compliance Requirements?

The tests which formed the basis of the proposed emission limitations were conducted following EPA or CARB test methods. The proposed rule requires the use of EPA or CARB test methods to determine compliance. This ensures that the same analytical methods that were followed to collect the emission data upon which the emission limitations are based will be followed for compliance testing. By using the same methods, we eliminate the possibility of measurement bias influencing determinations of compliance.

In an effort to identify the most feasible testing and compliance requirements for stationary RICE, we considered the applicability of several compliance and monitoring options. The results of these considerations lead us to propose different compliance and monitoring requirements for stationary RICE with manufacturer's nameplate ratings less than 5000 brake horsepower, and stationary RICE with manufacturer's nameplate ratings greater than or equal to 5000 brake horsepower.

We selected less burdensome compliance requirements for smaller size stationary RICE considering the ratio of total control and monitoring costs to the equipment cost. For smaller size stationary RICE, we considered the ratio excessive.

For 2SLB and 4SLB stationary RICE and CI stationary RICE with manufacturer's nameplate ratings less than 5000 brake horsepower complying with the requirement to reduce CO emissions using an oxidation catalyst, we decided to require an initial performance test for CO. The purpose of the initial performance test is to demonstrate initial compliance with the CO percent reduction emission limitation; to establish the initial pressure drop across the catalyst, which will serve as the reference point for continuous monitoring of the pressure drop across the catalyst; and also to demonstrate that the catalyst inlet temperature is within the specified operating limitations.

For 2SLB and 4SLB stationary RICE and CI stationary RICE with manufacturer's nameplate ratings greater than or equal to 5000 brake horsepower complying with the requirement to reduce CO emissions using an oxidation catalyst, an initial performance evaluation is required to validate the performance of the CEMS for continuous monitoring of CO emissions. Initial compliance with the CO emission limitation must then be demonstrated by using CO emission measurements from the first 4-hour period following a successful performance evaluation of the CO CEMS.

For all 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 75 percent using NSCR, an initial performance test is required. The purpose of the initial performance test is to demonstrate compliance with the formaldehyde percent reduction emission limitation and to establish the initial values of the operating parameters that will be continuously monitored (*i.e.*, pressure drop across the catalyst, the catalyst inlet temperature and the initial temperature rise across the catalyst).

For all stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust, an initial performance test is required. The purpose of the initial performance test is to demonstrate initial compliance with the formaldehyde concentration limit and also to establish the values of the operating limitations (*i.e.*, either operating load or fuel flow rate and any other parameters which are approved by the Administrator as operating limitations), which will be continuously monitored.

H. How Did We Select the Continuous Compliance Requirements?

Continuous compliance is required at all times except during startup, shutdown, and malfunction of your stationary RICE.

As mentioned above, we considered the applicability of several compliance and monitoring options for stationary RICE. The results of these considerations lead us to propose different compliance and monitoring requirements for stationary RICE with manufacturer's nameplate ratings less than 5000 brake horsepower and stationary RICE with manufacturer's nameplate ratings greater than or equal to 5000 brake horsepower.

For 2SLB and 4SLB stationary RICE and CI RICE with manufacturer's nameplate ratings less than 5000 brake horsepower complying with the requirement to reduce CO emissions using an oxidation catalyst, we considered several options: (1) A CEMS for CO; (2) semiannual stack testing for CO using Method 10A of 40 CFR part 60, appendix A, and continuous parametric monitoring of the pressure drop across the catalyst and the catalyst inlet temperature; (3) quarterly stack testing with a portable CO monitor using American Society for Testing and Materials (ASTM) D6522–00, and continuous parametric monitoring of the pressure drop across the catalyst and the catalyst inlet temperature; and (4) initial stack testing for CO with a portable CO monitor using ASTM D6522–00 and continuous parametric monitoring of the pressure drop across the catalyst and the catalyst inlet temperature.

We consider the control and monitoring costs for the first two options excessive, but consider the control and monitoring costs associated with the third option reasonable. As a result, 2SLB and 4SLB stationary RICE and CI stationary RICE with a manufacturer's nameplate ratings less than 5000 brake horsepower complying with the CO percent reduction emission limitation must perform quarterly stack testing for CO using a portable CO monitor. The quarterly testing will ensure, on an ongoing basis, that the source is meeting the CO percent reduction requirement.

In addition to quarterly stack testing for CO, the stationary RICE are required to continuously monitor pressure drop across the catalyst and catalyst inlet temperature. The parameters serve as surrogates of the oxidation catalyst performance.

The pressure drop across the catalyst can indicate if the oxidation catalyst is damaged or fouled, in which case, catalyst performance would decrease. If the pressure drop across the catalyst deviates by more than two inches of water from the pressure drop across the catalyst measured during the initial performance test, the oxidation catalyst might be damaged or fouled. If you

change the oxidation catalyst (*i.e.*, replace catalyst elements), you must reestablish the pressure drop across the catalyst.

The catalyst inlet temperature is a requirement for proper performance of the oxidation catalyst. In general, the oxidation catalyst performance will decrease as the catalyst inlet temperature decreases. In addition, if the catalyst inlet temperature is too high (above 1,250 degrees Fahrenheit), it might be an indication of ignition misfiring, poisoning, or fouling, which would decrease oxidation catalyst performance. In addition, the oxidation catalyst requires inlet temperatures to be greater than or equal to 500 degrees Fahrenheit for the reduction of HAP emissions.

For 2SLB and 4SLB stationary RICE and CI RICE with a manufacturer's nameplate rating greater than or equal to 5000 brake horsepower complying with the requirement to reduce CO emissions using an oxidation catalyst, we considered the same four monitoring options. For these larger size stationary RICE, however, we consider the control and monitoring costs for a CO CEMS reasonable.

We consider the use of CEMS to be the best means of ensuring continuous compliance with emission limitations. Consequently, the large 2SLB and 4SLB stationary RICE and CI stationary RICE are required to use a CO CEMS. An annual RATA and daily and periodic data quality checks in accordance with 40 CFR part 60, appendix F, procedure 1, are also required to ensure that performance of the CEMS does not deteriorate over time. There are no operating limitations for the larger size stationary RICE in the subcategories since the CEMS continuously measures CO and will indicate any deviation from the emission limitations.

For 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions using NSCR, we also considered three monitoring options: (1) A CEMS for formaldehyde; (2) stack testing for formaldehyde using Test Method 320 or 323 of 40 CFR part 60, appendix A, CARB Method 430, or EPA SW–846 Method 0011 with an initial frequency of semiannually which, following two consecutive stack tests demonstrating compliance, could decrease to annual stack testing and continuous parametric monitoring; and (3) initial stack testing for formaldehyde using Test Method 320 or 323 of 40 CFR part 60, appendix A, CARB Method 430, or EPA SW–846 Method 0011 and continuous parametric monitoring.

We consider the control and monitoring costs associated with the first option excessive for all 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions using NSCR. For 4SRB stationary RICE with a manufacturer's nameplate rating of more than 5000 brake horsepower, we consider the control and monitoring costs of the second option reasonable. Consequently, we chose that option for the larger size 4SRB stationary RICE.

For 4SRB stationary RICE with a manufacturer's nameplate ratings less than 5000 brake horsepower, we also consider the control and monitoring costs of the second option excessive. We consider the control and monitoring costs of the third option reasonable, and we chose that option for the smaller 4SRB stationary RICE.

For all 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions using NSCR, monitoring the pressure drop across the catalyst, the catalyst inlet temperature and the temperature rise across the catalyst with a CPMS is also required. The operating parameters serve as surrogates of the NSCR system performance.

As with oxidation catalyst systems for lean burn and CI stationary RICE, the pressure drop across an NSCR system is an indication of catalyst performance on 4SRB stationary RICE. The operating limitations are also the same—maintain the pressure drop across the catalyst within two inches of water from the pressure drop measured during the initial performance test. If you change your NSCR (*i.e.*, replace catalyst elements), you must reestablish your pressure drop across the catalyst, the catalyst inlet temperature and the temperature rise across the catalyst.

As for oxidation catalyst control devices, the performance of NSCR is also dependent on catalyst inlet temperature. Catalyst inlet temperature should be maintained between 750 degrees Fahrenheit and 1250 degrees Fahrenheit for proper activation of the catalyst. Temperatures lower than that fail to activate the catalyst to its full potential, while temperatures higher than that can sinter and damage the active sites of the catalyst.

In addition, the temperature rise across the catalyst is also an indication of NSCR performance. If the temperature rise across the catalyst is more than 5 percent different from the temperature rise across the catalyst measured during the initial performance test, that might be an indication that the NSCR is being damaged or fouled. In that case, catalyst performance would decrease, lowering HAP reductions.

For stationary RICE complying with the requirement to limit the concentration of formaldehyde in the exhaust of the stationary RICE, we also considered requiring a CEMS. However, we consider the costs of a formaldehyde CEMS to be excessive. A reasonable alternative to a formaldehyde CEMS, however, is a CPMS (supplemented by periodic compliance tests).

Hazardous air pollutant emissions from stationary RICE correlate with operating load; HAP emissions increase as load decreases. As a result, if a stationary RICE operates at loads greater than that at which compliance has been demonstrated through a performance test, there is a reasonable assurance that the stationary RICE remains in compliance. An alternative to monitoring operating load is monitoring the stationary RICE's fuel flow rate. Fuel flow rate is an indicator of operating load. As a result, we propose that stationary RICE which comply with the concentration of formaldehyde in the stationary RICE exhaust monitor continuously operating load or fuel flow rate as operating limitations.

The intention is to measure formaldehyde at the lowest load at which the stationary RICE will be operated to establish compliance at that load level. By monitoring operating load or fuel flow rate, sources can ensure that they do not operate at load or fuel flow rate conditions (within 5 percent) below which compliance has not been demonstrated.

In addition, sources complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust are required to conduct semiannual performance tests. Semiannual performance testing will ensure, on an ongoing basis, that the source is meeting the formaldehyde concentration limit.

To reduce the cost burden of performance testing, sources that show compliance for two successive performance tests may reduce performance testing frequency. We believe that a reduction to one performance test per year will provide sufficient assurance of stationary RICE performance while reducing the performance testing costs for the affected source. However, if a subsequent annual performance test indicates a deviation from the formaldehyde concentration limit, the source must resume semiannual performance testing. The source must include a notification to the Administrator in their semiannual compliance report stating that they will be reducing the frequency of performance testing.

I. What Monitoring and Testing Methods are Available to Measure These Low Concentrations of CO and Formaldehyde?

We believe CEMS are available which can measure CO emissions at the low concentrations found in the exhaust from a stationary RICE following an oxidation catalyst control system. Our PS 4 and 4A for CO CEMS of 40 CFR part 60, appendix B, however, have not been updated recently and do not reflect the performance capabilities of such systems at these low CO concentration levels.

As a result, we solicit comments on the performance capabilities of state-of-the-art CO CEMS and their ability to accurately measure the low concentrations of CO experienced in the exhaust of a stationary RICE following an oxidation catalyst control system. We also solicit comments with specific recommendations on the changes we should make to our PS 4 and 4A for CO CEMS of 40 CFR part 60, appendix B, to ensure the installation and use of CEMS which can be used to determine compliance with the proposed emission limitation for CO emissions. In addition, we solicit comments on the availability of instruments capable of meeting the changes they recommend to our performance specifications for CO CEMS.

The proposed rule specifies the use of Method 10 of 40 CFR part 60, appendix A, as the reference method to certify the performance of the CO CEMS. We also believe Method 10 of 40 CFR part 60, appendix A, is capable of measuring CO concentrations as low as those experienced in the exhaust of a stationary RICE following an oxidation catalyst control system. However, the performance criteria in addenda A of Method 10 of 40 CFR part 60, appendix A, have not been revised recently and are not suitable for certifying the performance of a CO CEMS at the low CO concentrations. Specifically, we believe the range and minimum detectable sensitivity should be changed to reflect target concentrations as low as 5 ppm CO in some cases. We also expect that dual range instruments will be necessary to measure CO concentrations at the inlet and at the outlet of an oxidation catalyst emission control device.

As a result, we solicit comments with specific recommendations on the changes we should make to Method 10 of 40 CFR part 60, appendix A, and the performance criteria in addenda A. We also solicit comments on the availability of instruments capable of meeting the changes they recommend to Method 10 of 40 CFR part 60, appendix A, and the performance criteria in addenda A, while also meeting the remaining addenda A performance criteria.

With regard to formaldehyde, we believe systems meeting the requirements of Method 320 of 40 CFR part 63, appendix A, a self-validating FTIR method, can be used to attain detection limits for formaldehyde concentrations below 350 ppbvd. Method 320 of 40 CFR part 60, appendix A, also includes formaldehyde spike recovery criteria which require spike recoveries of 70 to 130 percent.

While we believe FTIR systems can meet Method 320 of 40 CFR part 63, appendix A, and measure formaldehyde concentrations at the low levels, we have limited experience with their use. As a result, we solicit comments on the ability and use of FTIR systems to meet the validation and quality assurance requirements of Method 320 of 40 CFR part 63, appendix A, for the purpose of determining compliance with the emission limitation for formaldehyde emissions.

We also believe EPA Method 323 of 40 CFR part 63, appendix A and CARB Method 430 are capable of measuring formaldehyde concentrations at the low levels from 4SRB engines. Accordingly, we solicit comments on the use of EPA Method 323, CARB 430, and EPA SW–846 Method 0011 to determine compliance with the emission limitations for formaldehyde for 4SRB engines.

Based on the comments we receive on CO CEMS, we anticipate revising Method 10 of 40 CFR part 60, appendix A, and our PS 4 and 4A of 40 CFR part 60, appendix B, for CO CEMS to ensure the installation and use of CEMS suitable for determining compliance with the emission limitation for CO emissions. Similarly, based on the comments we receive on FTIR systems and Method 320 of 40 CFR part 63, appendix A, we may develop additional or revised criteria for the use of FTIR systems and/or Method 320 of 40 CFR part 63, appendix A, to determine compliance with the emission limitation for formaldehyde.

On the other hand, if the comments we receive lead us to conclude that CO CEMS are not capable of being used to determine compliance with the emission limitation for CO emissions, there are several alternatives we may consider. One alternative would be to delete the proposed percent reduction emission limitation for CO and require compliance with a comparable formaldehyde percent reduction limitation. That alternative would require periodic stack emission testing before and after the control device and would also require owners and operators to petition the Administrator for additional operating limitations as proposed for those choosing to comply with the emission limitation for formaldehyde. Another alternative would be to delete the proposed emission limitation for CO emissions and require compliance with the proposed emission limitation for formaldehyde. That alternative could also require more frequent emission testing and could also require owners and operators to petition the Administrator for additional operating limitations.

Another alternative would be to require the use of Method 320 of 40 CFR part 60, appendix A, (*i.e.*, FTIR systems) to determine compliance with the emission limitation for CO emissions. That alternative could also require more frequent emission testing and require owners and operators to petition the Administrator for additional operating limitations, as proposed for those choosing to comply with the emission limitation for formaldehyde.

Yet another alternative would be to delete the emission limitations for both CO emissions and formaldehyde emissions and adopt an emission limitation consisting of an equipment and work practice requirement. That alternative would require the use of oxidation catalyst control systems for 2SLB and 4SLB stationary RICE and CI stationary RICE, and NSCR systems for 4SRB stationary RICE which meet specific and narrow design and operating criteria.

We believe the emission limitations we are proposing for CO emissions and formaldehyde emissions are superior to these alternatives for a number of reasons. However, we solicit comments on the alternatives should we conclude that the proposed emission limitations for CO emissions and formaldehyde emissions are inappropriate because of difficulties in monitoring or measuring CO emissions or formaldehyde emissions to determine compliance. We also solicit suggestions and recommendations for other alternatives should we conclude the proposed emission limitations are inappropriate because of monitoring or measurement difficulties.

J. How Did We Select the Notification, Recordkeeping and Reporting Requirements?

The proposed notification, recordkeeping, and reporting requirements are based on the NESHAP General Provisions of 40 CFR part 63.

IV. Summary of Environmental, Energy and Economic Impacts

A. What Are the Air Quality Impacts?

The proposed rule will reduce total HAP emissions from stationary RICE by an estimated 5,000 tons/year in the 5th year after the standards are implemented. We believe approximately 1,800 existing 4SRB stationary RICE will be affected by the proposed rule. In addition, we believe that approximately 1,600 new 2SLB, 4SLB and 4SRB stationary RICE, and CI stationary RICE will be affected by the proposed rule each year for the next 5 years. At the end of the 5th year, it is estimated that 8,100 new stationary RICE will be subject to the proposed rule.

To estimate air impacts, HAP emissions from stationary RICE were estimated using average emission factors from the emissions database. It was also assumed that each stationary RICE is operated for 6,500 hours annually. The total national HAP emissions reductions are the sum of formaldehyde, acetaldehyde, acrolein, and methanol emissions reductions.

In addition to HAP emissions reductions, the proposed rule will reduce criteria pollutant emissions, including CO, VOC, NO_X, and particulate matter (PM). The application of NSCR controls to 4SRB engines (the technology on which MACT for 4SRB engines is based) will also reduce NO_X emissions by 90 percent. It is possible that oxidation catalyst controls could be used to meet the 4SRB emission standards, but it is expected that the costs of controls will be similar for both systems. Assuming that 60 percent of the 4SRB (new and existing) engines that are covered by the emission standards will use NSCR, the cumulative emissions reductions of NO_X by the end of the 5th year after promulgation are calculated to be about 167,900 tons per year. We are specifically soliciting comments on the percentage of 4SRB engines that would choose to install NSCR HAP controls rather than other HAP controls.

B. What Are the Cost Impacts?

A list of 26 model stationary RICE was developed to represent the range of existing stationary RICE. Information was obtained from catalyst vendors on equipment costs for oxidation catalyst and NSCR. This information was then used to estimate the costs of the proposed rule for each model stationary RICE following methodologies from the Office of Air Quality Planning and Standards (OAQPS) Control Cost Manual. These cost estimates for model stationary RICE were extrapolated to the national population of stationary RICE in the United States, and national impacts were determined.

The total national capital cost for the proposed rule for existing stationary RICE is estimated to be approximately $68 million, with a total national annual cost of $38 million in the 5th year. The total national capital cost for the proposed rule for new stationary RICE by the 5th year is estimated to be approximately $372 million, with a total national annual cost of $216 million in the 5th year.

C. What Are the Economic Impacts?

We prepared an economic impact analysis to evaluate the primary and secondary impacts the proposed rule would have on the producers and consumers of RICE, and society as a whole. The affected engines operate in over 30 different manufacturing markets, but a large portion are located in the oil and gas exploration industry, the oil and gas pipeline (transmission) industry, the mining and quarrying of non-metallic minerals industry, the chemicals and allied products industry, and the electricity and gas services industry. Taken together, these industries can have an influence on the price and demand for fuels used in the energy market (*i.e.*, petroleum, natural gas, electricity, and coal). Therefore, our analysis evaluates the impacts on each of the 30 different manufacturing markets affected by the proposed rule, as well as the combined effect on the market for energy. The total annualized social cost (in 1998 dollars) of the proposed rule is $254 million but this cost is spread across all 30 markets and the fuel markets. Overall, our analysis indicates a minimal change in prices and quantity produced in most of the fuel markets. The distribution of impacts on the fuel markets and the specific manufacturing market segments evaluated are summarized in Table 1 of this preamble.

TABLE 1.—ECONOMIC IMPACT OF PROPOSED RICE RULE ON AFFECTED MARKET SECTORS

Market sector	Change in price (%)	Change in market output (%)	Total social cost (millions of 1998$)
Fuel Markets: [a]			
Petroleum	0.005	−0.001	−6.0
Natural Gas	0.101	−0.014	−35.2
Electricity	0.022	0.001	3.2
Coal	0.001	0.001	0.3
Subtotal	.....	.....	−38.3
Sectors of Energy Consumption: [b]			
Commercial Sector	.....	.....	−68.4
Residential Sector	.....	.....	−40.0
Transportation Sector	.....	.....	−16.2
Mining and Quarrying	0.020	−0.006	−21.0
Food Products	0.001	−0.001	−5.9
Paper Products	0.001	−0.001	−5.2
Chemical Products	0.001	−0.002	−17.8
Primary Metals	0.001	−0.001	−6.7
Fabricated Metal Products	0.001	−0.000	−1.8
Nonmetallic Mineral Products	0.002	−0.002	−3.5
Construction Sector	0.001	−0.001	−11.1

TABLE 1.—ECONOMIC IMPACT OF PROPOSED RICE RULE ON AFFECTED MARKET SECTORS—Continued

Market sector	Change in price (%)	Change in market output (%)	Total social cost (millions of 1998$)
Other Manufacturing Markets	0.000	0.0–0.001	−17.7

[a] Only changes in producer surplus (*i.e.*, producer's share of regulatory costs) are reported for the Fuel Markets which represent the producers of energy. Sectors of energy consumption—commercial, residential, and transportation—have reported changes in consumer surplus only, and thus do not have reported changes in price and output. A combination of these costs will represent total social costs for the energy market in the economy.

Because the engines affected by the proposed rule are those that use natural gas as a fuel source, it is not surprising to see the natural gas fuel market with the largest portion of the social costs. Although the natural gas market has a greater share of the regulatory burden, the overall impact on prices is about one-tenth of 1 percent, which is considered to be a minor economic impact on this industry. The change in the price of natural gas is not expected to influence the purchase decisions for new engines. Our analysis indicates that at most, less than 5 fewer engines out of over 20,000 engines will be purchased as a result of economic impacts associated with the proposed rule. The electricity and coal markets may experience a slight gain in revenues due to some fuel switching from natural gas to coal or electricity.

The total social welfare loss for the manufacturing industries affected by the proposed rule is estimated to be approximately $39.9 million for consumers and $44.7 million for producers in the aggregate. In comparison to the energy expenditures of these industries (estimated to be $101.2 billion), the cost of the proposed rule to producers as a percentage of their fuel expenditures is 0.04 percent. For consumers, the total value of shipments for the affected industries is $3.95 trillion in 1998, so the cost to consumers as a percentage of spending on the outputs from these industries is nearly zero, or 0.001 percent.

The cost to residential consumers at $40.0 million is larger than for any individual manufacturing market, and about equivalent to the aggregate consumer surplus losses in the manufacturing industries. In comparison, the social cost burden to residential consumers of fuel is 0.03 percent of residential energy expenditures ($40.0 million/$131.06 billion). The commercial sector of energy users also experiences a moderate portion of total social costs at an estimated $29.3 million and represents an aggregate across all commercial North American Industrial Classification System (NAICS) codes. As a percentage of fuel expenditures by this sector of fuel consumers, the regulatory burden is 0.03 percent ($29.3 million/$96.86 billion). The cost to transportation consumers is estimated to be $16.2 million. This cost represents 0.008 percent ($16.2 million/$188.13 billion) of energy expenditures for the transportation sector.

Therefore, giving consideration to the minimal changes in prices and output in nearly all markets, and the fact that the regulatory costs that are shared by commercial, residential, and transportation users of fuel energy are a small fraction of typical energy expenditures in these sectors each year, we conclude that the economic impacts of the proposed rule will not be significant to any one sector of the economy.

D. What Are the Non-Air Health, Environmental and Energy Impacts?

We do not expect any significant wastewater, solid waste, or energy impacts resulting from the proposed rule. Energy impacts associated with the proposed rule would be due to additional energy consumption that the proposed rule would require by installing and operating control equipment. The only energy requirement for the operation of the control technologies is a very small increase in fuel consumption resulting from back pressure caused by the emission control system.

V. Solicitation of Comments and Public Participation

A. General

We are requesting comments on all aspects of the proposed rule, such as the proposed emission limitations and operating limitations, recordkeeping and monitoring requirements, as well as aspects you may feel have not been addressed.

Specifically, we request comments on the performance capabilities of state-of-the-art CO CEMS and their ability to measure the low concentrations of CO in the exhaust of a stationary RICE following an oxidation catalyst control system. We also request comments with recommendations on changes we should make to our PS 4 and 4A for CO CEMS of 40 CFR part 60, appendix B, and to Method 10 of 40 CFR part 60, appendix A, and the performance criteria in addenda A to Method 10. In addition, we request comments on the availability of instruments capable of meeting the changes they recommend to our performance specifications for CO CEMS, Method 10 of 40 CFR part 60, appendix A, and addenda A to Method 10.

As also mentioned earlier, we request comments on the ability and use of FTIR systems to meet the validation and quality assurance requirements of Method 320 of 40 CFR part 63, appendix A, for the purpose of determining compliance with the emission limitations for formaldehyde emissions. In addition, we request comments on the use of CARB 430 to determine compliance with the emission limitations for formaldehyde.

In addition, we request any HAP emissions test data available from stationary RICE; however, if you submit HAP emissions test data, please submit the full and complete emission test report with these data. Without a complete emission test report, which includes sections describing the stationary RICE and its operation during the test as well as identifying the stationary RICE for purposes of verification, discussion of the test methods employed and the quality assurance/quality control procedures followed, the raw data sheets, all the calculations, etc., which such reports contain, submittal of HAP emission data by itself is of little use.

B. Can We Achieve the Goals of the Rule in a Less Costly Manner?

We have made every effort in developing the proposal to minimize the cost to the regulated community and allow maximum flexibility in compliance options consistent with our statutory obligations. We recognize, however, that the proposal may still require some facilities to take costly steps to further control emissions even though those emissions may not result

in exposures which could pose an excess individual lifetime cancer risk greater than one in one million or which exceed thresholds determined to provide an ample margin of safety for protecting public health and the environment from the effects of hazardous air pollutants. We are, therefore, specifically soliciting comment on whether there are further ways to structure the proposed rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment.

Representatives of the plywood and composite wood products industry provided EPA with descriptions of three mechanisms that they believed could be used to implement more cost-effective reductions in risk. The docket for the proposed rule contains white papers prepared by industry that outline their proposed approaches (see docket number OAR–2002–0059). These approaches could be effective in focusing regulatory controls on facilities that pose significant risks and avoiding the imposition of high costs on facilities that pose little risk to public health or the environment, and we are seeking public comment on the utility of each of these approaches with respect to the proposed rule.

One of the approaches, an applicability cutoff for threshold pollutants, would be implemented under the authority of CAA section 112(d)(4); the second approach, subcategorization and delisting, would be implemented under the authority of CAA sections 112(c)(1) and 112(c)(9); and, the third approach would involve the use of a concentration-based applicability threshold. We are seeking comment on whether these approaches are legally justified and, if so, we ask for information that could be used to support such approaches.

The MACT program outlined in CAA section 112(d) is intended to reduce emissions of HAP through the application of MACT to major sources of toxic air pollutants. Section 112(c)(9) of the CAA is intended to allow EPA to avoid setting MACT standards for categories or subcategories of sources that pose less than a specified level of risk to public health and the environment. The EPA requests comment on whether the proposals described here appropriately rely on these provisions of CAA section 112. While both approaches focus on assessing the inhalation exposures of HAP emitted by a source, EPA specifically requests comment on the appropriateness and necessity of extending these approaches to account for non-inhalation exposures or to account for adverse environmental impacts. In addition to the specific requests for comment noted in this section, we are also interested in any information or comment concerning technical limitations, environmental and cost impacts, compliance assurance, legal rationale, and implementation relevant to the identified approaches. We also request comment on appropriate practicable and verifiable methods to ensure that sources' emissions remain below levels that protect public health and the environment. We will evaluate all comments before determining whether either of the three approaches will be included in the final rule.

1. Industry Emissions and Potential Health Effects

For the RICE source category, four HAP make up the majority of the total HAP. Those four HAP are methanol, formaldehyde, acetaldehyde, and acrolein. In accordance with section 112(k) of the CAA, EPA developed a list of 33 HAP which represent the greatest threat to public health in the largest number of urban areas. Three of the four HAP, acetaldehyde, acrolein, and formaldehyde, are included in the HAP listed for the EPA's Urban Air Toxics Program.

In November 1998, EPA published ''A Multimedia Strategy for Priority, Persistent, Bioaccumulative, and Toxic (PBT) Pollutants''. The HAP emitted by RICE facilities do not appear on the published list of PBT compounds referenced in the EPA strategy.

Two of the HAP, acetaldehyde and formaldehyde, are considered to be nonthreshold carcinogens, and cancer potency values are reported for them in Integrated Risk Information System (IRIS). Acrolein and methanol are not carcinogens, but are considered to be threshold pollutants, and inhalation reference concentrations are reported for them in IRIS and by the California Environmental Protection Agency (CalEPA), respectively.

To estimate the potential baseline risks posed by the RICE source category, EPA performed a crude risk analysis of the RICE source category that focused only on cancer risks. The results of the analysis are based on approaches for estimating cancer incidence that carry significant assumptions, uncertainties, and limitations. Based on the assessment, if the proposed rule is implemented at all affected RICE facilities, annual cancer incidence is estimated to be reduced on the order of ten cases/year. Due to the uncertainties associated with the analysis, annual cancer incidence could be higher or lower than these estimates. (Details of this assessment are available in the docket.)

2. Applicability Cutoffs for Threshold Pollutants Under Section 112(d)(4) of the CAA

The first approach is an applicability cutoff for threshold pollutants that is based on EPA's authority under CAA section 112(d)(4) to establish standards for HAP which are threshold pollutants. A ''threshold pollutant'' is one for which there is a concentration or dose below which adverse effects are not expected to occur over a lifetime of exposure. For such pollutants, CAA section 112(d)(4) allows EPA to consider the threshold level, with an ample margin of safety, when establishing emission standards. Specifically, CAA section 112(d)(4) allows EPA to establish emission standards that are not based upon the MACT specified under CAA section 112(d)(2) for pollutants for which a health threshold has been established. Such standards may be less stringent than MACT. Historically, EPA has interpreted CAA section 112(d)(4) to allow categories of sources that emit only threshold pollutants to avoid further regulation if those emissions result in ambient levels that do not exceed the threshold, with an ample margin of safety.[1]

A different interpretation would allow us to exempt individual facilities within a source category that meet the CAA section 112(d)(4) requirements. There are three potential scenarios under this interpretation of the CAA section 112(d)(4) provision. One scenario would allow an exemption for individual facilities that emit only threshold pollutants and can demonstrate that their emissions of threshold pollutants would not result in air concentrations above the threshold levels, with an ample margin of safety, even if the category is otherwise subject to MACT. A second scenario would allow the CAA section 112(d)(4) provision to be applied to both threshold and non-threshold pollutants, using the one in a million cancer risk level for decision making for nonthreshold pollutants. A third scenario would allow a CAA section 112(d)(4) exemption at a facility that emits both threshold and nonthreshold pollutants. For those emission points where only threshold pollutants are emitted and where emissions of the threshold pollutants would not result in air concentrations above the threshold

[1] See 63 FR 18765–66 (April 15, 1998) (Pulp and Paper Combustion Sources Proposed NESHAP).

levels, with an ample margin of safety, those emission points could be exempt from the MACT standards. The MACT standards would still apply to nonthreshold emissions from other emission points at the source. For this third scenario, emission points that emit a combination of threshold and nonthreshold pollutants that are co-controlled by MACT would still be subject to the MACT level of control. However, any threshold HAP eligible for exemption under CAA section 112(d)(4) that are controlled by control devices different from those controlling nonthreshold HAP would be able to use the exemption, and the facility would still be subject to the parts of the standards that control nonthreshold pollutants or that control both threshold and non-threshold pollutants.

a. Estimation of Hazard Quotients and Hazard Indices

Under the CAA section 112(d)(4) approach, EPA would have to determine that emissions of each of the threshold pollutants emitted by RICE sources at the facility do not result in exposures which exceed the threshold levels, with an ample margin of safety. The common approach for evaluating the potential hazard of a threshold air pollutant is to calculate a hazard quotient by dividing the pollutant's inhalation exposure concentration (often assumed to be equivalent to its estimated concentration in air at a location where people could be exposed) by the pollutant's inhalation Reference Concentration (RfC). An RfC is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure that, over a lifetime, likely would not result in the occurrence of adverse health effects in humans, including sensitive individuals. The EPA typically establishes an RfC by applying uncertainty factors to the critical toxic effect derived from the lowest-or no-observed-adverse-effect level of a pollutant.[2] A hazard quotient less than one means that the exposure concentration of the pollutant is less than the RfC, and, therefore, presumed to be without appreciable risk of adverse health effects. A hazard quotient greater than one means that the exposure concentration of the pollutant is greater than the RfC. Further, EPA guidance for assessing exposures to mixtures of threshold pollutants recommends calculating a hazard index by summing the individual hazard quotients for those pollutants in the mixture that affect the same target organ or system by the same mechanism.[3] Hazard index (HI) values would be interpreted similarly to hazard quotients; values below one would generally be considered to be without appreciable risk of adverse health effects, and values above one would generally be cause for concern.

For the determinations discussed herein, EPA would generally plan to use RfC values contained in EPA's toxicology database, the IRIS. When a pollutant does not have an approved RfC in IRIS, or when a pollutant is a carcinogen, EPA would have to determine whether a threshold exists based upon the availability of specific data on the pollutant's mode or mechanism of action, potentially using a health threshold value from an alternative source, such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the CalEPA. Table 2 of this preamble provides the RfC, as well as unit risk estimates, for the HAP emitted by facilities in the RICE source category. A unit risk estimate is defined as the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 micrograms per cubic meter ($\mu g/m^3$) in air.

TABLE 2.—DOSE-RESPONSE ASSESSMENT VALUES FOR HAP REPORTED EMITTED BY THE RICE SOURCE CATEGORY

Chemical name	CAS No.	Reference concentration [a] (mg/m^3)	Unit risk estimate [b] ($1/(\mu g/m^3)$)
Acetaldehyde	75–07–0	9.0E–03 (IRIS)	2.2E–06 (IRIS)
Acrolein	107–02–8	2.0E–05 (IRIS)	
Formaldehyde	50–00–0	9.8E–03 (ATSDR)	1.3E–05 (IRIS)
Methanol	67–56–1	4.0E+00 (CAL)	

[a] Reference Concentration: An estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups which include children, asthmatics and the elderly) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

[b] Unit Risk Estimate: The upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 $\mu g/m^3$ in air. The interpretation of the Unit Risk Estimate would be as follows: if the Unit Risk Estimate = 1.5×10^{-6} per $\mu g/m^3$, 1.5 excess tumors are expected to develop per 1,000,000 people if exposed daily for a lifetime to 1 microgram (μg) of the chemical in 1 cubic meter of air. Unit Risk Estimates are considered upper bound estimates, meaning they represent a plausible upper limit to the true value. (Note that this is usually not a true statistical confidence limit.) The true risk is likely to be less, but could be greater.

Sources: IRIS = EPA Integrated Risk Information System (*http://www.epa.gov/iris/subst/index.html*)
ATSDR = U.S. Agency for Toxic Substances and Disease Registry (*http://www.atsdr.cdc.gov/mrls.html*)
CAL = California Office of Environmental Health Hazard Assessment (*http://www.oehha.ca.gov/air/hot_spots/index.html*)
HEAST = EPA Health Effects Assessment Summary Tables (#PB (=97–921199), July 1997)

To establish an applicability cutoff under CAA section 112(d)(4), EPA would need to define ambient air exposure concentration limits for any threshold pollutants involved. There are several factors to consider when establishing such concentrations. First, we would need to ensure that the concentrations that would be established would protect public health with an ample margin of safety. As discussed above, the approach EPA commonly uses when evaluating the potential hazard of a threshold air pollutant is to calculate the pollutant's hazard quotient, which is the exposure concentration divided by the RfC.

The EPA's ''Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures'' suggests that the noncancer health effects associated with a mixture of pollutants ideally are assessed by considering the pollutants' common mechanisms of toxicity [3]. The guidance also suggests, however, that when exposures to mixtures of pollutants are being evaluated, the risk assessor may calculate a HI. The recommended method is to calculate multiple hazard indices for each

[2] ''Methods for Derivation of Inhalation Reference Concentrations and Applications of Inhalation Dosimetry.'' EPA–600/8–90–066F, Office of Research and Development, USEPA, October 1994.

[3] ''Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum Technical Panel,'' EPA/630/R–00/002. USEPA, August 2000. *http://www.epa.gov/nceaww1/pdfs/chem mix/chem mix 08 2001.pdf.*

exposure route of interest, and for a single specific toxic effect or toxicity to a single target organ. The default approach recommended by the guidance is to sum the hazard quotients for those pollutants that induce the same toxic effect or affect the same target organ. A mixture is then assessed by several HI, each representing one toxic effect or target organ. The guidance notes that the pollutants included in the HI calculation are any pollutants that show the effect being assessed, regardless of the critical effect upon which the RfC is based. The guidance cautions that if the target organ or toxic effect for which the HI is calculated is different from the RfC's critical effect, then the RfC for that chemical will be an overestimate, that is, the resultant HI potentially may be overprotective. Conversely, since the calculation of an HI does not account for the fact that the potency of a mixture of HAP can be more potent than the sum of the individual HAP potencies, an HI may potentially be underprotective.

b. Options for Establishing a Hazard Index Limit

One consideration in establishing a hazard index limit is whether the analysis considers the total ambient air concentrations of all the emitted HAP to which the public is exposed [4]. There are at least several options for establishing a hazard index limit for the CAA section 112(d)(4) analysis that reflect, to varying degrees, public exposure.

One option is to allow the HI posed by all threshold HAP emitted from RICE sources at the facility to be no greater than one. This approach is protective if no additional threshold HAP exposures would be anticipated from other sources in the vicinity of the facility or through other routes of exposure (*e.g.*, through ingestion).

A second option is to adopt a default percentage approach, whereby the hazard index limit of the HAP emitted by the facility is set at some percentage of one (*e.g.*, 20 percent or 0.2). This approach recognizes the fact that the facility in question is only one of many sources of threshold HAP to which people are typically exposed every day. Because noncancer risk assessment is predicated on total exposure or dose, and because risk assessments focus only on an individual source, establishing a hazard index limit of 0.2 would account for an assumption that 20 percent of an individual's total exposure is from that individual source. For the purposes of this discussion, we will call all sources of HAP, other than the facility in question, background sources. If the facility is allowed to emit HAP such that its own impacts could result in HI values of one, total exposures to threshold HAP in the vicinity of the facility could be substantially greater than one due to background sources, and this would not be protective of public health, since only HI values below one are considered to be without appreciable risk of adverse health effects. Thus, setting the hazard index limit for the facility at some default percentage of one will provide a buffer which would help to ensure that total exposures to threshold HAP near the facility (*i.e.*, in combination with exposures due to background sources) will generally not exceed one, and can generally be considered to be without appreciable risk of adverse health effects.

The EPA requests comment on using the default percentage approach and on setting the default hazard index limit at 0.2. The EPA is also requesting comment on whether an alternative HI limit, in some multiple of 1 would be a more appropriate applicability cutoff.

A third option is to use available data (from scientific literature or EPA studies, for example) to determine background concentrations of HAP, possibly on a national or regional basis. These data would be used to estimate the exposures to HAP from non-RICE sources in the vicinity of an individual facility. For example, the EPA's National-Scale Air Toxics Assessment (NATA) [5] and ATSDR's Toxicological Profiles [6] contain information about background concentrations of some HAP in the atmosphere and other media. The combined exposures from RICE sources and from other sources (as determined from the literature or studies) would then not be allowed to exceed a hazard index limit of 1. The EPA requests comment on the appropriateness of setting the hazard index limit at 1 for such an analysis.

A fourth option is to allow facilities to estimate or measure their own facility-specific background HAP concentrations for use in their analysis. With regard to the third and fourth options, the EPA requests comment on how these analyses could be structured. Specifically, EPA requests comment on how the analyses should take into account background exposure levels from air, water, food and soil encountered by the individuals exposed to RICE emissions. In addition, we request comment on how such analyses should account for potential increases in exposures due to the use of a new or the increased use of a previously emitted HAP, or the effect of other nearby sources that release HAP.

The EPA requests comment on the feasibility and scientific validity of each of these or other approaches. Finally, EPA requests comment on how we should implement the CAA section 112(d)(4) applicability cutoffs, including appropriate mechanisms for applying cutoffs to individual facilities. For example, would the title V permit process provide an appropriate mechanism?

c. Tiered Analytical Approach for Predicting Exposure

Establishing that a facility meets the cutoffs established under CAA section 112(d)(4) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would promote a tiered analytical approach for these determinations. A tiered analysis involves making successive refinements in modeling methodologies and input data to derive successively less conservative, more realistic estimates of pollutant concentrations in air and estimates of risk.

As a first tier of analysis, EPA could develop a series of simple look-up tables based on the results of air dispersion modeling conducted using conservative input assumptions. By specifying a limited number of input parameters, such as stack height, distance to property line, and emission rate, a facility could use these look-up tables to determine easily whether the emissions from their sources might cause a hazard index limit to be exceeded.

A facility that does not pass this initial conservative screening analysis could implement increasingly more site-specific but more resource-intensive tiers of analysis using EPA-approved modeling procedures, in an attempt to demonstrate that exposure to emissions from the facility does not exceed the hazard index limit. The EPA's guidance could provide the basis for conducting such a tiered analysis.[7]

The EPA requests comment on methods for constructing and implementing a tiered analytical approach for determining applicability of the CAA section 112(d)(4) criterion to specific RICE sources. It is also possible

[4] Senate Debate on Conference Report (October 27, 1990), reprinted in ''A Legislative History of the Clean Air Act Amendments of 1990,'' Comm. Print S. Prt. 103–38 (1993) (''Legis. Hist.'') at 868.

[5] See *http://www.epa.gov/ttn/atw/nata.*

[6] See *http://www.atsdr.cdc.gov/toxpro2.html.*

[7] ''A Tiered Modeling Approach for Assessing the Risks due to Sources of Hazardous Air Pollutants.'' EPA–450/4–92–001. David E. Guinnup, Office of Air Quality Planning and Standards, USEPA, March 1992.

that ambient monitoring data could be used to supplement or supplant the tiered modeling approach described above. It is envisioned that the appropriate monitoring to support such a determination could be extensive. The EPA requests comment on the appropriate use of monitoring in the determinations described above.

d. Accounting for Dose-Response Relationships

In the past, EPA routinely treated carcinogens as nonthreshold pollutants. The EPA recognizes that advances in risk assessment science and policy may affect the way EPA differentiates between threshold and nonthreshold HAP. The EPA's draft Guidelines for Carcinogen Risk Assessment [8] suggest that carcinogens be assigned non-linear dose-response relationships where data warrant. Moreover, it is possible that dose-response curves for some pollutants may reach zero risk at a dose greater than zero, creating a threshold for carcinogenic effects. It is possible that future evaluations of the carcinogens emitted by this source category would determine that one or more of the carcinogens in the category is a threshold carcinogen or is a carcinogen that exhibits a non-linear dose-response relationship but does not have a threshold.

The dose-response assessments for formaldehyde and acetaldehyde are currently undergoing revision by the EPA. As part of this revision effort, EPA is evaluating formaldehyde and acetaldehyde as potential non-linear carcinogens. The revised dose-response assessments will be subject to review by the EPA Science Advisory Board, followed by full consensus review, before adoption into the EPA Integrated Risk Information System. At this time, EPA estimates that the consensus review will be completed by the end of 2003. The revision of the dose-response assessments could affect the potency factors of these HAP, as well as their status as threshold or nonthreshold pollutants. At this time, the outcome is not known. In addition to the current reassessment by EPA, there have been several reassessments of the toxicity and carcinogenicity of formaldehyde in recent years, including work by the World Health Organization and the Canadian Ministry of Health.

The EPA requests comment on how we should consider the state of the science as it relates to the treatment of threshold pollutants when making determinations under section 112(d)(4). In addition, EPA requests comment on whether there is a level of emissions of a nonthreshold carcinogenic HAP (*e.g.,* benzene, methylene chloride) at which it would be appropriate to allow a facility to use the approaches discussed in this section.

If the CAA section 112(d)(4) approach were adopted, the proposed rulemaking would likely indicate that the requirements of the rule do not apply to any source that demonstrates, based on a tiered approach that includes EPA-approved modeling of the affected source's emissions, that the anticipated HAP exposures do not exceed the specified hazard index limit.

3. Subcategory Delisting Under Section 112(c)(9)(B) of the CAA

The EPA is authorized to establish categories and subcategories of sources, as appropriate, pursuant to CAA section 112(c)(1), in order to facilitate the development of MACT standards consistent with section 112 of the CAA. Further, section 112(c)(9)(B) allows EPA to delete a category (or subcategory) from the list of major sources for which MACT standards are to be developed when the following can be demonstrated: (1) In the case of carcinogenic pollutants, that ''no source in the category * * * emits (carcinogenic) air pollutants in quantities which may cause a lifetime risk of cancer greater than 1 in 1 million to the individual in the population who is most exposed to emissions of such pollutants from the source''; (2) in the case of pollutants that cause adverse noncancer health effects, that ''emissions from no source in the category or subcategory * * * exceed a level which is adequate to protect public health with an ample margin of safety''; and (3) in the case of pollutants that cause adverse environmental effects, that ''no adverse environmental effect will result from emissions from any source.''

Given these authorities and the suggestions from the white paper prepared by industry representatives (see docket number OAR–2002–0059), EPA is considering whether it would be possible to establish a subcategory of facilities within the larger RICE category that would meet the risk-based criteria for delisting. Such criteria would likely include the same requirements as described previously for the second scenario under the section 112(d)(4) approach, whereby a facility would be in the low-risk subcategory if its emissions of threshold pollutants do not result in exposures which exceed the HI limits and if its emissions of nonthreshold pollutants do not result in exposures which exceed a cancer risk level of 10^{-6}. The EPA requests comment on what an appropriate HI limit would be for a determination that a facility be included in the low-risk subcategory.

Since each facility in such a subcategory would be a low-risk facility (*i.e.,* if each met these criteria), the subcategory could be delisted in accordance with CAA section 112(c)(9), thereby limiting the costs and impacts of the proposed rule to only those facilities that do not qualify for subcategorization and delisting. The EPA estimates that the maximum potential effect of this approach would be the same as that of applying the CAA section 112(d)(4) approach that allows exemption of facilities emitting threshold and non-threshold pollutants if exemption criteria are met.

Facilities seeking to be included in the delisted subcategory would be responsible for providing all data required to determine whether they are eligible for inclusion. Facilities that could not demonstrate that they are eligible to be included in the low-risk subcategory would be subject to MACT and possible future residual risk standards. The EPA solicits comment on implementing a risk-based approach for establishing subcategories of RICE facilities.

Establishing that a facility qualifies for the low-risk subcategory under CAA section 112(c)(9) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would employ the same tiered analytical approach described earlier in the CAA section 112(d)(4) discussion for these determinations.

One concern that EPA has with respect to the CAA section 112(c)(9) approach is the effect that it could have on the MACT floors. If many of the facilities in the low-risk subcategory are well-controlled, that could make the MACT floor less stringent for the remaining facilities. One approach that has been suggested to mitigate this effect would be to establish the MACT floor now based on controls in place for the entire category and to allow facilities to become part of the low-risk subcategory in the future, after the MACT standards are established. This would allow low risk facilities to use the CAA section 112(c)(9) exemption without affecting the MACT floor calculation. The EPA requests comment on this suggested approach.

[8] ''Draft Revised Guidelines for Carcinogen Risk Assessment.'' NCEA–F–0644. USEPA, Risk Assessment Forum, July 1999. pp 3–9ff. *http://www.epa.gov/ncea/raf/pdfs/cancer_gls.pdf.*

Another approach under CAA section 112(c)(9) would be to define a subcategory of facilities within the RICE source category based upon technological differences, such as differences in production rate, emission vent flow rates, overall facility size, emissions characteristics, processes, or air pollution control device viability. The EPA requests comment on how we might establish RICE subcategories based on these, or other, source characteristics. If it could then be determined that each source in this technologically-defined subcategory presents a low risk to the surrounding community, the subcategory could then be delisted in accordance with CAA section 112(c)(9). The EPA requests comment on the concept of identifying technologically-based subcategories that may include only low-risk facilities within the RICE source category.

If the CAA section 112(c)(9) approach were adopted, the proposed rulemaking would likely indicate that the rule does not apply to any source that demonstrates that it belongs in a subcategory which has been delisted under CAA section 112(c)(9).

C. Limited Use Subcategory

We are soliciting comments on creating a subcategory of limited use engines with capacity utilization of 10 percent or less (876 or fewer hours of annual operation). Units in this subcategory would include engines used for electric power peak shaving that are called upon to operate fewer than 876 hours per year. These units operate only during peak energy use periods, typically in the summer months. We believe that these infrequently operated units typically operate 10 percent of the year or less. While these are potential sources of emissions, and it is appropriate for EPA to address them in the proposed rule, the Agency believes that their use and operation are different compared to typical RICE. We believe that it may be appropriate for such limited use units to have their own subcategory. Therefore, we are soliciting comment on subcategorizing RICE having a capacity utilization of less than 10 percent.

We have performed a preliminary MACT floor analysis on engines with under 10 percent capacity utilization that are in EPA's RICE database. This analysis indicates that existing units would have a floor of no emissions reductions and new units would have a floor equal to the performance of an oxidation catalyst system.

We are interested in comments on creating a subcategory for limited use peak shaving (less than 10 percent capacity utilization) engines. We are interested in comments on the validity and appropriateness under the CAA for a subcategory for limited use peak shaving engines, data on the levels of control currently achieved by such engines, and any technical limitations that might make it impossible to achieve control of emissions from limited use peak shaving engines.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the proposed rule is a ''significant regulatory action'' because it could have an annual effect on the economy of over $100 million. Consequently, this action was submitted to OMB for review under Executive Order 12866. Any written comments from OMB and written EPA responses are available in the docket.

As stipulated in Executive Order 12866, in deciding how or whether to regulate, EPA is required to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. To this end, EPA prepared a detailed benefit-cost analysis in the ''Regulatory Impact Analysis of the Proposed Reciprocating Internal Combustion Engines NESHAP,'' which is contained in the docket. The following is a summary of the benefit-cost analysis.

It is estimated that 5 years after implementation of the proposed rule, HAP will be reduced by 5,000 tons per year due to reductions in formaldehyde, acetaldehyde, acrolein, methanol, and several other HAP from some existing and all new internal combustion engines. Formaldehyde and acetaldehyde have been classified as ''probable human carcinogens'' based on scientific studies conducted over the past 20 years. These studies have determined a relationship between exposure to these HAP and the onset of cancer; however, there are some questions remaining on how cancers that may result from exposure to these HAP can be quantified in terms of dollars. Acrolein, methanol and the other HAP emitted from RICE sources are not considered carcinogenic but have been reported to cause several noncarcinogenic effects.

The control technology to reduce the level of HAP emitted from RICE are also expected to reduce emissions of criteria pollutants, primarily CO, NO_X, and PM, however, VOC are also reduced to a minor extent. It is estimated that CO emissions reductions totals approximately 234,400 tons/year, NO_X emissions reductions totals approximately 167,900 tons/year, and PM emissions reductions totals approximately 3,700 tons per year. These reductions occur from new and existing engines in operation 5 years after the implementation of the rule as proposed and are expected to continue throughout the life of the engines and continue to grow as new engines (that otherwise would not be controlled) are purchased for operation. Human health effects associated with exposure to CO include cardiovascular system and CNS effects, which are directly related to reduced oxygen content of blood and which can result in modification of visual perception, hearing, motor and sensorimotor performance, vigilance, and cognitive ability. Emissions of NO_X can transform into PM in the atmosphere, which produces a variety of health and welfare effects. Human health effects associated with NO_X include respiratory problems, such as chronic bronchitis, asthma, or even death from complications. Welfare effects from direct NO_X exposure include agricultural and forestry damage and acidification of estuaries through rain deposition of nitrogen; while fine PM particles created from NO_X can reduce visibility in national parks and other natural and urban areas.

At the present time, the Agency cannot provide a monetary estimate for the benefits associated with the reductions in CO. For NO_X and PM, the Agency has conducted several analyses recently that estimate the monetized

benefits of these pollutant reductions, including: the Regulatory Impact Analysis (RIA) of the PM/Ozone National Ambient Air Quality Standards (1997), the NO_X State Implementation Plan Call (1998), the section 126 RIA (1999), a study conducted for section 812(b) of the Clean Air Act Amendments (1990), the Tier 2/ Gasoline Sulfur Standards (1999), and the Heavy Duty Engine/Diesel Fuel Standards (2000).

On September 26, 2002, the National Academy of Sciences (NAS) released a report on its review of the Agency's methodology for analyzing the health benefits of measures taken to reduce air pollution. The report focused on EPA's approach for estimating the health benefits of regulations designed to reduce concentrations of airborne particulate matter (PM).

In its report, the NAS said that EPA has generally used a reasonable framework for analyzing the health benefits of PM-control measures. It recommended, however, that the Agency take a number of steps to improve its benefits analysis. In particular, the NAS stated that the Agency should:

(1) Include benefits estimates for a range of regulatory options;

(2) Estimate benefits for intervals, such as every 5 years, rather than a single year;

(3) Clearly state the project baseline statistics used in estimating health benefits, including those for air emissions, air quality, and health outcomes;

(4) Examine whether implementation of proposed regulations might cause unintended impacts on human health or the environment;

(5) When appropriate, use data from non-U.S. studies to broaden age ranges to which current estimates apply and to include more types of relevant health outcomes;

(6) Begin to move the assessment of uncertainties from its ancillary analyses into its primary analyses by conducting probabilistic, multiple-source uncertainty analyses. This assessment should be based on available data and expert judgment.

Although the NAS made a number of recommendations for improvement in EPA's approach, it found that the studies selected by EPA for use in its benefits analysis were generally reasonable choices. In particular, the NAS agreed with EPA's decision to use cohort studies to derive benefits estimates. It also concluded that the Agency's selection of the American Cancer Society (ACS) study for the evaluation of PM-related premature mortality was reasonable, although it noted the publication of new cohort studies that should be evaluated by the Agency. Several of the NAS recommendations addressed the issue of uncertainty and how the Agency can better analyze and communicate the uncertainties associated with its benefits assessments. In particular, the Committee expressed concern about the Agency's reliance on a single value from its analysis and suggested that EPA develop a probabilistic approach for analyzing the health benefits of proposed regulatory actions. The Agency agrees with this suggestion and is working to develop such an approach for use in future rulemakings.

In the RIA for the proposed rule, the Agency has used an interim approach that shows the impact of several important alternative assumptions about the estimation and valuation of reductions in premature mortality and chronic bronchitis. This approach, which was developed in the context of the Agency's Clear Skies analysis, provides an alternative estimate of health benefits using the time series studies in place of cohort studies, as well as alternative valuation methods for mortality and chronic bronchitis risk reductions.

For today's action, we conducted an air quality assessment to determine the change in concentrations of PM that results from reductions of NO_X and direct emissions of PM at all sources of RICE. Because we are unable to identify the location of all affected existing and new sources of RICE, our analysis is conducted in two phases. In the first phase, we conduct air quality analysis assuming a 50 percent reduction of 1996-levels of NO_X emissions and a 100 percent reduction of PM_{10} emissions for all RICE sources throughout the country. The results of this analysis serve as a reasonable approximation of air quality changes to transfer to the proposed rule's emissions reductions at affected sources. The results of the air quality assessment served as input to a model that estimates the benefits related to the health effects listed above. In the second phase of our analysis, the value of the benefits per ton of NO_X and PM reduced (*e.g.,* $ benefit/ton reduced) associated with the air quality scenarios are then applied to the tons of NO_X and PM emissions expected to be reduced by the proposed rule. We also used the benefit transfer method to value improvements in ozone based on the transfer of benefit values from an analysis of the 1998 NO_X SIP call. In addition, although the benefits of the welfare effects of NO_X are monetized in other Agency analyses, we chose not to do an analysis of the improvements in welfare effects that will result from the proposed rule. Alternatively, we could transfer the estimates of welfare benefits from these other studies to this analysis, but chose not to do so because these studies with estimated welfare benefits differ in the source and location of emissions and associated impacted populations.

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. While these general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references, the key uncertainties which have a bearing on the results of the benefit-cost analysis of today's action are the following:

(1) The exclusion of potentially significant benefit categories (*e.g.,* health and ecological benefits of reduction in hazardous air pollutants emissions);

(2) Errors in measurement and projection for variables such as population growth;

(3) Uncertainties in the estimation of future year emissions inventories and air quality;

(4) Uncertainties associated with the extrapolation of air quality monitoring data to some unmonitored areas required to better capture the effects of the standards on the affected population;

(5) Variability in the estimated relationships of health and welfare effects to changes in pollutant concentrations; and

(6) Uncertainties associated with the benefit transfer approach.

Despite these uncertainties, we believe the benefit-cost analysis provides a reasonable indication of the expected economic benefits of the RICE NESHAP under two different sets of assumptions.

We have used two approaches (Base and Alternative Estimates) to provide benefits in health effects and in

monetary terms. They differ in the method used to estimate and value reduced incidences of mortality and chronic bronchitis, which is explained in detail in the RIA. While there is a substantial difference in the specific estimates, both approaches show that the RICE MACT may provide benefits to public health, whether expressed as health improvements or as economic benefits. These include prolonging lives, reducing cases of chronic bronchitis and hospital admissions, and reducing thousands of cases in other indicators of adverse health effects, such as work loss days, restricted activity days, and days with asthma attacks. In addition, there are a number of health and environmental effects which we were unable to quantify or monetize. These effects, denoted by ''B'' are additive to both the Base and Alternative estimates of benefits. Results also reflect the use of two different discount rates for the valuation of reduced incidences of mortality; a 3 percent rate which is recommended by EPA's Guidelines for Preparing Economic Analyses (U.S. EPA, 2000a), and 7 percent which is recommended by OMB Circular A–94 (OMB, 1992).

More specifically, the Base Estimate of benefits reflects the use of peer-reviewed methodologies developed for earlier risk and benefit-cost assessments related to the Clean Air Act, such as the regulatory assessments of the Heavy Duty Diesel and Tier II rules and the section 812 Report to Congress. The Alternative Estimate explores important aspects of the key elements underlying estimates of the benefits of reducing NO_X emissions, specifically focusing on estimation and valuation of mortality risk reduction and valuation of chronic bronchitis. The Alternative Estimate of mortality reduction relies on recent scientific studies finding an association between increased mortality and short-term exposure to particulate matter over days to weeks, while the Base Estimate relies on a recent reanalysis of earlier studies that associate long-term exposure to fine particles with increased mortality. The Alternative Estimate differs in the following ways: It explicitly omits any impact of long-term exposure on premature mortality, it uses different data on valuation and makes adjustments relating to the health status and potential longevity of the populations most likely affected by PM, it also uses a cost-of-illness method to value reductions in cases of chronic bronchitis while the Base Estimate is based on individual's willingness to pay (WTP) to avoid a case of chronic bronchitis. In addition, one key area of uncertainty is the value of a statistical life (VSL) for risk reductions in mortality, which is also the category of benefits that accounts for a large portion of the total benefit estimate. The adoption of a value for the projected reduction in the risk of premature mortality is the subject of continuing discussion within the economic and public policy analysis community. There is general agreement that the value to an individual of a reduction in mortality risk can vary based on several factors, including the age of the individual, the type of risk, the level of control the individual has over the risk, the individual's attitude toward risk, and the health status of the individual.

The Environmental Economics Advisory Committee (EEAC) of the EPA Science Advisory Board (SAB) recently issued an advisory report which states that ''the theoretically appropriate method is to calculate WTP for individuals whose ages correspond to those of the affected population, and that it is preferable to base these calculations on empirical estimates of WTP by age'' (EPA–SAB–EEAC–00–013). In developing our Base Estimate of the benefits of premature mortality reductions, we have appropriately discounted over the lag period between exposure and premature mortality. However, the empirical basis for adjusting the current $6 million VSL for other factors does not yet justify including these in our Base Estimate. A discussion of these factors is contained in the RIA and supporting documents. The EPA recognizes the need for additional research by the scientific community to develop additional empirical support for adjustments to VSL for the factors mentioned above. Furthermore, EPA prefers not to draw distinctions in the monetary value assigned to the lives saved even if they differ in age, health status, socioeconomic status, gender or other characteristic of the adult population. However, adjustments to VSL for age and life expectancy are explored in the Alternative Estimate.

Given its basis in methods approved by the SAB, we employed the approach used for the benefit analysis of the Heavy Duty Engine/Diesel Fuel standards conducted in 2000 to the RICE NESHAP discussed in this preamble. A full discussion of considerations made in our presentation of benefits is summarized in the preamble of the Final Heavy Duty Engine/Diesel Fuel standards issued in December 2000, and in all supporting documentation and analyses of the Heavy Duty Diesel Program, and in the RIA for the proposed rule.

In addition to the presentation of quantified health benefits, our estimate also includes a ''B'' to represent those additional health and environmental benefits which could not be expressed in quantitative incidence and/or economic value terms. A full appreciation of the overall economic consequences of the RICE NESHAP requires consideration of all benefits and costs expected to result from the new standards, not just those benefits and costs which could be expressed here in dollar terms. A full listing of the benefit categories that could not be quantified or monetized in our estimate are provided in Table 3 of this preamble.

TABLE 3.—UNQUANTIFIED BENEFIT CATEGORIES FROM RICE EMISSIONS REDUCTIONS

	Unquantified benefit categories associated with HAP	Unquantified benefit categories associated with ozone	Unquantified benefit categories associated with PM
Health Categories	Carcinogenicity mortality. Genotoxicity mortality. Non-Cancer lethality. Pulmonary function decrement. Dermal irritation. Eye irritation. Neurotoxicity. Immunotoxicity. Pulmonary function decrement. Liver damage. Gastrointestinal toxicity. Kidney damage. Cardiovascular impairment. Hematopoietic (Blood disorders). Reproductive/Developmental toxicity.	Airway responsiveness. Pulmonary inflammation. Increased susceptibility to respiratory infection. Acute inflammation and respiratory cell damage. Chronic respiratory damage/Premature aging of lungs. Emergency room visits for asthma.	Changes in pulmonary function. Morphological changes. Altered host defense mechanisms. Cancer. Other chronic respiratory disease. Emergency room visits for asthma. Lower and upper respiratory symptoms. Acute bronchitis. Shortness of breath.
Welfare Categories	Corrosion/deterioration. Unpleasant odors. Transportation safety concerns. Yield reductions/Foliar injury. Biomass decrease. Species richness decline. Species diversity decline. Community size decrease. Organism lifespan decrease. Trophic web shortening.	Ecosystem and vegetation effects in Class I areas (e.g., national parks). Damage to urban ornamentals (e.g., grass, flowers, shrubs, and trees in urban areas). Commercial field crops. Fruit and vegetable crops Reduced yields of tree seedlings, commercial and non-commercial forests. Damage to ecosystems. Materials damage.	Materials damage. Damage to ecosystems (e.g., acid sulfate deposition). Nitrates in drinking water.

Our Base Estimate of benefits totals approximately $280 million when using a 3 percent interest rate (or approximately $265 million when using a 7 percent interest rate). The Alternative Estimate totals approximately $40 million when using a 3 percent interest rate (or approximately $45 million when using a 7 percent interest rate).

Benefit-cost comparison (or net benefits) is another tool used to evaluate the reallocation of society's resources needed to address the pollution externality created by the operation of RICE units. The additional costs of internalizing the pollution produced at major sources of emissions from RICE units is compared to the improvement in society's well-being from a cleaner and healthier environment. Comparing benefits of the proposed rule to the costs imposed by alternative ways to control emissions optimally identifies a strategy that results in the highest net benefit to society. In the case of the proposed RICE NESHAP, we are proposing only one option, the minimal level of control mandated by the Clean Air Act, or the MACT floor.

Table 4 of this preamble presents a summary of the costs, emission reductions, and quantifiable benefits by engine type. Table 5 of this preamble presents a summary of net benefits. Based on estimated compliance costs associated with the proposed rule and the predicted change in prices and production in the affected industries, the estimated social costs of the proposed rule are $254 million (1998$) as are discussed previously in this preamble.

Unfortunately, the air benefits characterized in this analysis are limited by the data available on the numerous health and welfare categories for the affected pollutants and by the lack of approved methods for quantifying effects.

Using the Base Estimate of benefits, the portion of total benefits associated with NO_X and PM reductions exceed the estimated total costs of the proposed rule by $25 million + B when using a 3 percent discount rate (or approximately $10 million + B when using a 7 percent discount rate). However, using the more conservative Alternative Estimate of benefits, net benefits are negative. Under the Alternative Estimate, net benefits total −$215 million + B under a 3 percent discount rate (or approximately −$210 million + B when using a 7 percent discount rate). Approximately 90 percent of the total benefits ($255 million under the Base Estimate, and $35 million under the Alternative Estimate) are associated with NO_X reductions from the 4SRB subcategory for new and existing engines. Approximately 10 percent of the total benefits ($25 million under the Base Estimate, and $5 million under the Alternative Estimate) are associated with the PM reductions from the compression ignition engine subcategory at new sources.

In both cases, net benefits would be greater if all the benefits of the HAP and other pollutant reductions could be quantified. Notable omissions to the net benefits include all benefits of HAP and CO reductions, including reduced cancer incidences, toxic morbidity effects, and cardiovascular and CNS effects. It is also important to note that not all benefits of NO_X reductions have been monetized. Categories which have contributed significantly to monetized benefits in past analyses (see the RIA for the Heavy Duty Engine/Diesel standards) include commercial agriculture and forestry, recreational and residential visibility improvements, and estuarine improvements.

TABLE 4.—SUMMARY OF COSTS, EMISSION REDUCTIONS, AND QUANTIFIABLE BENEFITS BY ENGINE TYPE

Type of engine	Total annualized cost (million $/yr in the 5th year after promulgation)	Emission reductions [A] (tons/yr in the 5th year after promulgation)				Quantifiable annual monetized benefits [B,C] (million $/yr in the 2005)	
		HAP	CO	NO_X	PM	Base estimate	Alternative estimate
2SLB-New	3	250	2,025	0	0	B_1	B_2
4SLB-New	66	4,035	36,240	0	0	B_3	B_4
4SRB-Existing	38	230	98,040	69,900	0	$105 + B_5	$15 + B_7
						$100 + B_6	$15 + B_8
4SRB-New	48	215	91,820	98,000	0	$150 + B_9	$20 + B_{11}
						$140 + B_{10}	$25 + B_{12}
CI-New	99	305	6,320	0	3,700	$25 + B_{13}	$5 + B_{14}
Total	254	5,035	234,445	167,900	3,700	$280 + B	$40 + B
						$265 + B	$45 + B

[A] For the calculation of PM-related benefits, total NO_X reductions are multiplied by the appropriate benefit per ton value presented in Table 8–7 of the RIA. For the calculation of ozone-related benefits, NO_X reductions are multiplied by 5/12 to account for ozone season months and 0.74 to account for Eastern States in the ozone analysis. The resulting ozone-related NO_X reductions are multiplied by $28 per ton. Ozone-related benefits are summed together with PM-related benefits to derive total benefits of NO_X reductions. All benefits values are rounded to the nearest $5 million.

[B] Benefits of HAP and CO emissions reductions are not quantified in this analysis and, therefore, are not presented in this table. The quantifiable benefits are from emissions reductions of NO_X and PM only. For notational purposes, unquantified benefits are indicated with a ''B'' to represent monetary benefits. A detailed listing of unquantified NO_X, PM, and HAP related health effects is provided in Table 8–13 of the RIA.

[C] Results reflect the use of two different discount rates; a 3 percent rate which is recommended by EPA's Guidelines for Preparing Economic Analyses (U.S. EPA, 2000a), and 7 percent which is recommended by OMB Circular A–94 (OMB, 1992).

TABLE 5.—ANNUAL NET BENEFITS OF THE RICE NESHAP IN 2005

	Million 1998$ [A]
Social Costs [B]	$255
Social Benefits [B, C, D]:	
HAP-related benefits	Not monetized
CO-related benefits	Not monetized
Ozone- and PM-related welfare benefits	Not monetized
Ozone- and PM-related health benefits:	
Base Estimate	
—Using 3% Discount Rate	$280 + B
—Using 7% Discount Rate	$265 + B
Alternative Estimate	
—Using 3% Discount Rate	$40 + B
—Using 7% Discount Rate	$45 + B
Net Benefits (Benefits—Costs) [C, D]:	
Base Estimate	
—Using 3% Discount Rate	$25 + B
—Using 7% Discount Rate	$10 + B
Alternative Estimate	
—Using 3% Discount Rate	—$215 + B
—Using 7% Discount Rate	—$210 + B

[A] All costs and benefits are rounded to the nearest $5 million. Thus, figures presented in this chapter may not exactly equal benefit and cost numbers presented in earlier sections of the chapter.

[B] Note that costs are the total costs of reducing all pollutants, including HAP and CO, as well as NO_x and PM_{10}. Benefits in this table are associated only with PM and NO_x reductions.

[C] Not all possible benefits or disbenefits are quantified and monetized in this analysis. Potential benefit categories that have not been quantified and monetized are listed in Table 8–13. B is the sum of all unquantified benefits and disbenefits.

[D] Monetized benefits are presented using two different discount rates. Results calculated using 3 percent discount rate are recommended by EPA's Guidelines for Preparing Economic Analyses (U.S. EPA, 2000a). Results calculated using 7 percent discount rate are recommended by OMB Circular A–94 (OMB, 1992).

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

We are required by section 112 of the CAA, 42 U.S.C. 7412, to establish the standards in the proposed rule. The proposed rule primarily affects private industry and does not impose significant economic costs on State or local governments. The proposed rule does not include an express provision preempting State or local regulations. Thus, the requirements of section 6 of

the Executive Order do not apply to the proposed rule.

Although section 6 of Executive Order 13132 does not apply to the proposed rule, we consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of the proposed rule. This consultation took place during the ICCR FACA committee meetings where members representing State and local governments participated in developing recommendations for EPA's combustion-related rulemakings, including the proposed rule. The concerns raised by representatives of State and local governments were considered during the development of the proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, we specifically solicit comment on the proposed rule from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No known stationary RICE are located within the jurisdiction of any tribal government. Thus, Executive Order 13175 does not apply to the proposed rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the proposed rule is preferable to other potentially effective and reasonably feasible alternatives considered.

The Agency does not have reason to believe the environmental health or safety risks associated with the emissions addressed by the proposed rule present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assess the results of early life exposure to the pollutants addressed by the proposed rule and suggest a disproportionate impact.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, (66 FR 28355, May 22, 2001), requires EPA to prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as significant energy actions. Section 4(b) of Executive Order 13211 defines significant energy actions as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

While the proposed rule is a significant regulatory action under Executive Order 12866, EPA has determined that the proposed rule is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy based on the Statement of Energy Effects for this action provided below.

The RIA estimates changes in prices and production levels for all energy markets (*i.e.,* petroleum, natural gas, electricity, and coal). We also estimate how changes in the energy markets will impact other users of energy, such as manufacturing markets and residential, industrial and commercial consumers of energy. The results of the economic impact analysis for the proposed rule are shown for 2005, for that is the year in which full implementation of the rule is expected to occur. These results show that there will be minimal changes in price, if any, for most energy products affected by implementation of the proposed rule. Only a slight price increase (about 0.001 percent to 0.02 percent) may occur in three of the energy sectors: petroleum, electricity, and coal products nationwide, and approximately a one-tenth of one percent (*i.e.,* 0.10 percent) change in natural gas prices. The change in energy costs associated with the proposed rule, however, represents only 0.03 percent of expected annual energy expenditures by residential consumers in 2005, a 0.008 percent change for transportation consumers of energy, and about 0.03 percent of energy expenditures in the commercial sector. In addition, no discernable impact on exports or imports of energy products is expected. Therefore, the impacts on energy markets and users will be relatively small nationwide as a result of implementation of the proposed reciprocating internal combustion engines NESHAP.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the proposed rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish

any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, we have prepared a written statement under section 202 of the UMRA which is summarized below. The written statement is in the docket.

1. Statutory Authority

As discussed previously in this preamble, the statutory authority for the proposed rulemaking is section 112 of the CAA. Section 112(b) lists the 189 chemicals, compounds, or groups of chemicals deemed by Congress to be HAP. These toxic air pollutants are to be regulated by NESHAP.

Section 112(d) of the CAA directs us to develop NESHAP based on MACT which require existing and new major sources to control emissions of HAP. These NESHAP apply to all stationary RICE located at major sources of HAP emissions, however, only certain existing and new or reconstructed stationary RICE have substantive regulatory requirements.

In compliance with section 205(a), we identified and considered a reasonable number of regulatory alternatives. The regulatory alternative upon which the proposed rule is based represents the MACT floor for stationary RICE and, as a result, it is the least costly and least burdensome alternative.

2. Social Costs and Benefits

The RIA prepared for the proposed rule, including the Agency's assessment of costs and benefits, is detailed in the ''Regulatory Impact Analysis for the Proposed RICE NESHAP'' in the docket. Based on estimated compliance costs on all sources associated with the proposed rule and the predicted change in prices and production in the affected industries, the estimated social costs of the proposed rule are $254 million (1998$).

It is estimated that 5 years after implementation of the proposed rule, HAP will be reduced by 5,000 tons per year due to reductions in formaldehyde, acetaldehyde, acrolein, methanol and other HAP from existing and new stationary RICE. Formaldehyde and acetaldehyde have been classified as ''probable human carcinogens.'' Acrolein, methanol and the other HAP are not considered carcinogenic, but produce several other toxic effects. The proposed rule will also achieve reductions in 234,400 tons of CO, approximately 167,900 tons of NO_X per year, and approximately 3,700 tons of PM per year. Exposure to CO can effect the cardiovascular system and the central nervous system. Emissions of NO_X can transform into PM, which can result in fatalities and many respiratory problems (such as asthma or bronchitis); and NO_X can also transform into ozone causing several respiratory problems to affected populations.

At the present time, the Agency cannot provide a monetary estimate for the benefits associated with the reductions in HAP and CO. For NO_X and PM, we estimated the benefits associated with health effects of PM but were unable to quantify all categories of benefits of NO_X (particularly those associated with ecosystem and environmental effects). Unquantified benefits are noted with ''B'' in the estimates presented below. Total monetized benefits are approximately $280 million + B (1998$) under our Base Estimate when using a 3 percent discount rate (or approximately $265 million + B when using a 7 percent discount rate). Under the Alternative Estimate, total benefits are approximately $40 million + B when using a 3 percent discount rate (or approximately $45 million + B when using a 7 percent discount rate). The approach to value benefits is discussed in more detail in this preamble under the Executive Order 12866. These monetized benefits should be considered along with the many categories of benefits that we are unable to place a dollar value on to consider the total benefits of the proposed rule.

3. Future and Disproportionate Costs

The UMRA requires that we estimate, where accurate estimation is reasonably feasible, future compliance costs imposed by the proposed rule and any disproportionate budgetary effects. Our estimates of the future compliance costs of the proposed rule are discussed previously in this preamble.

We do not believe that there will be any disproportionate budgetary effects of the proposed rule on any particular areas of the country, State or local governments, types of communities (*e.g.*, urban, rural), or particular industry segments.

4. Effects on the National Economy

The UMRA requires that we estimate the effect of the proposed rule on the national economy. To the extent feasible, we must estimate the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of the U.S. goods and services if we determine that accurate estimates are reasonably feasible and that such effect is relevant and material.

The nationwide economic impact of the proposed rule is presented in the ''Regulatory Impact Analysis for RICE NESHAP'' in the docket. This analysis provides estimates of the effect of the proposed rule on most of the categories mentioned above. The results of the economic impact analysis are summarized previously in this preamble.

5. Consultation With Government Officials

The UMRA requires that we describe the extent of our prior consultation with affected State, local, and tribal officials, summarize the officials' comments or concerns, and summarize our response to those comments or concerns. In addition, section 203 of UMRA requires that we develop a plan for informing and advising small governments that may be significantly or uniquely impacted by a proposal. Although the proposed rule does not affect any State, local, or tribal governments, we have consulted with State and local air pollution control officials. We also have held meetings on the proposed rule with many of the stakeholders from numerous individual companies, environmental groups, consultants and vendors, labor unions, and other interested parties. We have added materials to the docket to document these meetings.

In addition, we have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements

under the Administrative Procedure Act or any other statute unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, ''small entity'' is defined as: (1) A small business whose parent company has fewer than 500 employees (for most affected industries); (2) a small governmental jurisdiction that is a government or a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that the proposed rule covers more than 25 different industries. For each industry, we applied the definition of a small business provided by the Small Business Administration at 13 CFR part 121, and classified by the NAICS. The Small Business Administration (SBA) defines small businesses in most industries affected by the proposed rule as those with fewer than 500 employees. However, SBA has defined ''small business'' differently for a limited number of industries, either through reference to another employment cap or through the substitution of total yearly revenues in place of an employment limit. For more information on the size standards for particular industries, please refer to the regulatory impact analysis in the docket.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In support of this certification, EPA examined the percentage of annual revenues that compliance costs may consume if small entities must absorb all of the compliance costs associated with the proposed rule. Since many firms will be able to pass along some or all compliance costs to customers, actual impacts will frequently be lower than those analyzed here.

As is mentioned in previous sections of this preamble, the proposed rule will set standards for only a limited set of existing units, specifically 4SRB units. For all other types of engines, the proposed rule would impose requirements only on new engines. The EPA identified a total of 26,832 engines located at commercial, industrial, and government facilities. From this initial population of 26,832 engines, 10,118 engines were excluded because the proposed regulation will not cover engines smaller than 500 horsepower or engines used to supply emergency/backup power. Of the 16,714 units remaining, 2,645 units had sufficient information to assign to model unit numbers developed during the cost analysis. These 2,645 units were linked to 834 existing facilities, owned by 153 parent companies. A total of 47 companies were identified as small entities, and only 13 of them own 4SRB engines. These small entities own a total of 39 4SRB units at 21 facilities. Further, assuming only 40 percent of the all RICE sources are located at major sources and, thus, affected by the regulation, about 16 of the 39 4SRB units identified at facilities owned by small businesses would be located at major sources.

Under this scenario, there are no small firms that have compliance costs above 3 percent of firm revenues and only two small firms owning 4SRB engines that have impacts between 1 and 3 percent of revenues. In addition to 12 small firms with 4SRB engines, there is one small government in the Inventory Database affected by the proposed rule. The costs to this city are approximately $3 per capita annually assuming their engine is affected by the proposed rule, less than 0.01 percent of median household income.

Based on this subset of the existing engines population, the regulation will affect no small entities owning RICE at a cost to sales ratio (CSR) greater than 3 percent, while approximately 4 percent (2/47) of small entities owning RICE greater than 500 horsepower will have compliance costs between 1 and 3 percent of sales under an upper bound cost scenario. In comparison, the total existing population of engines with greater than 500 horsepower that are not backup units is estimated to be 22,018.

Assuming the same breakdown of large and small company ownership of engines in the total population of existing engines as in the subset with parent company information identified, the Agency expects that approximately 17 small entities in the existing population of RICE owners would have CSR between 1 and 3 percent under an upper bound cost scenario where we assume all RICE owned by small entities are located at major sources.

In addition, because many small entities owning RICE will not be affected because of the exclusion of engines with less than 500 horsepower, the percentage of all small companies owning RICE that are affected by the proposed rule is even smaller. Based on the proportion of engines in the Inventory Database that are greater than 500 horsepower and are not backup units (16,714/26,832, or 62.3 percent) and assuming that small companies own the same proportion of small engines (less than 500 horsepower) as they do of engines greater than 500 horsepower, the Agency estimates that 628 small companies own RICE. Of all small companies owning RICE, 2.7 percent (17/628) are expected to have CSR between 1 and 3 percent under an upper bound cost scenario. If the percentage of RICE owned by small companies that are located at major sources is the same as the engine population overall (40 percent), only about 1.1 percent of small companies owning RICE would be expected to have CSR greater than 1 percent.

The average profit margin for the industries in our analysis is approximately 5 percent. Therefore, based on this median profit margin data, it seems reasonable to review the number of small firms with CSR above 3 percent in screening for significant impacts. In addition, based on the low number of affected small firms, the fact that no small firms have CSR between 3 and 5 percent, and the fact that industry profit margins average 5 percent, this analysis concludes that the proposed rule will not have a significant impact on a substantial number of existing small entities.

For new sources, it can be reasonably assumed that the investment decision to purchase a new engine may be slightly altered as a result of the proposed rule. In fact, for the entire population of affected engines (approximately 20,000 new engines over a 5-year period), 2 fewer engines (0.01 percent) may be purchased due to changes in costs of the engines and market responses to the proposed rule. It is not possible, however, to determine future investment decisions by the small entities in the affected industries, so we cannot link these 2 engines to any one firm (small or large). Overall, it is very unlikely that a substantial number of small firms who may consider purchasing a new engine will be significantly impacted, because the decision to purchase new engines is not altered to a large extent.

In addition to this consideration of costs on some firms attributable to the proposed rule, EPA notes the proposed rule is likely to increase revenues for many small firms, including those not regulated by the proposed rule, due to a predictable increase in prices of natural gas in the industry. Although the proposed rule will not have a significant impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the proposed rule on small

entities. In the proposed rule, we are applying the minimum level of control allowed by the CAA (*i.e.,* the MACT floor), and the minimum level of monitoring, recordkeeping, and reporting by affected sources. In addition, as mentioned earlier in the preamble, new RICE units with capacities under 500 horsepower and those that operate as emergency/limited use units are not covered by the proposed rule, provisions that should greatly reduce the level of small-entity impacts. We continue to be interested in reducing any remaining impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

The information collection requirements in the proposed rule will be submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared (ICR No. 1975.01) and a copy may be obtained from Susan Auby by mail at the U.S. Environmental Protection Agency, Collection Strategies Division (2822), 1200 Pennsylvania Avenue NW., Washington, DC 200, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) is estimated to be 142,436 labor hours per year at a total annual cost of $15,998,347. The estimate includes a one-time performance test and report (with repeat tests where needed); one-time purchase and installation of bag leak detection systems; one-time submission of a startup, shutdown, and malfunction plan with semiannual reports for any event when the procedures in the plan were not followed; semiannual excess emission reports; maintenance inspections; notifications; and recordkeeping. Total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $5,436,882, with operation and maintenance costs of $1,208,206/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on our need for the information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the U.S. EPA, Director, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 19, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by January 21, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposed rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rulemaking involves technical standards. We propose in the rule to use EPA Methods 1, 1A, 3A, 3B, 4, 10 of 40 CFR part 60, appendix A; Method 320 of 40 CFR part 63, appendix A; PS 3, PS 4A of 40 CFR part 60, appendix B; EPA SW–8 Method 0011, and ARB Method 430, California Environmental Protection Agency, Air Resources Board, 2020 L Street, Sacramento, CA 95812. Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 3B, PS 3, PS 4 of CFR part 60, and ARB Method 430, California Environmental Protection Agency, Air Resources Board, 2020 L Street, Sacramento, CA 95812. The search and review results have been documented and are placed in the docket for the proposed rule.

One voluntary consensus standard was identified as applicable, and we propose to use that standard in the proposed rule. The voluntary consensus standard, ASTM D6522–00 (2000)—Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions From Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, is an acceptable alternative procedure for use in determining carbon monoxide and oxygen concentrations the exhaust gases of reciprocating internal combustion engines.

In addition to the voluntary consensus standard we propose to use in the rule, this search for emission

measurement procedures identified ten other voluntary consensus standards. We determined that six of these ten standards were impractical alternatives to EPA test methods for the purposes of the proposed rulemaking. Therefore, we do not propose to adopt these standards today. The reasons for this determination for the six methods are discussed below.

Two of the six voluntary consensus standards are impractical alternatives to EPA test methods for the purposes of the proposed rulemaking because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM E337–84 (Reapproved 1996), ''Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures),'' for EPA Method 4 of 40 CFR part 60, appendix A; and CAN/CSA Z223.2–M86(1986), ''Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,'' for EPA Method 3A of 40 CFR part 60, appendix A.

Four of the six voluntary consensus standards are impractical alternatives to EPA test methods for the purposes of the proposed rulemaking because they lacked sufficient quality assurance and quality control requirements necessary for EPA compliance assurance requirements: ASTM D3154–91, ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' for EPA Methods 1, 2, 2C, 3, 3B, and 4 of 40 CFR part 60, appendix A; ASTM D5835–95, ''Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration,'' for EPA Method 3A of 40 CFR part 60, appendix A; ISO 10396:1993, ''Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,'' for EPA Method 3A of 40 CFR part 60, appendix A; ISO 9096:1992, ''Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method,'' for EPA Method 5 of 40 CFR part 60, appendix A.

The following four of the ten voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the proposed rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 1 (and possibly 2) of 40 CFR part 60, appendix A; ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A of 40 CFR part 60, appendix A; ASTM D6348–98, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' for EPA Method 320 of 40 CFR part 63, appendix A; and Gas Research Institute, ''Measurement of Formaldehyde Emissions Using the Acetylacetone Colorimetric Method'' for EPA Method 320 of 40 CFR part 60, appendix A. While we are not proposing to include these four voluntary consensus standards in today's proposal, we will consider the standards when final.

The consensus standard, GRI, ''Measurement of Formaldehyde Emissions Using the Acetylacetone Colorimetric Method,'' is currently under our review as an alternative method for sampling formaldehyde emissions in the exhaust of natural gas-fired combustion sources. This standard is based on the ''Chilled Impinger Train Method for Methanol, Acetone, Acetaldehyde, Methyl Ethyl Ketone, and Formaldehyde'' and is described by the National Council for Air and Stream Improvement in its Technical Bulletin No. 684, dated December 1994. After EPA's review, if this GRI standard is determined to be technically appropriate for identifying formaldehyde emissions, it could be incorporated by reference for our regulatory applicability at a later date.

For the voluntary consensus standard, ASTM D6348–98, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' we have submitted comments to ASTM regarding EPA's technical evaluation of ASTM D6348–98. Currently, the ASTM Subcommittee D22–03 is undertaking a revision of the ASTM standard in part to address EPA's comments. Upon successful ASTM balloting and demonstration of technical equivalency with EPA's FTIR methods, the revised ASTM standard could be incorporated by reference for EPA regulatory applicability.

We are taking comment on the compliance demonstration requirements in the proposed rulemaking and specifically invite the public to identify potentially-applicable voluntary consensus standards. Commentors should also explain why the proposed regulation should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, of 40 CFR part 63, appendix A, was used).

Tables 4, 5, and 6 of proposed subpart ZZZZ list the EPA testing methods and performance standards included in the proposed rule. Under 40 CFR 63.8 of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart ZZZZ to read as follows:

Subpart ZZZZ—National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

Sec.

What This Subpart Covers

Emission and Operating Limitations

General Compliance Requirements

Testing and Initial Compliance Requirements

What This Subpart Covers

§ 63.6580 What is the purpose of subpart ZZZZ?

Subpart ZZZZ establishes national emission limitations and operating limitations for hazardous air pollutants (HAP) emitted from stationary reciprocating internal combustion engines (RICE) located at major sources of HAP emissions. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and operating limitations.

§ 63.6585 Am I subject to this subpart?

You are subject to this subpart if you own or operate a stationary RICE at a major source of HAP emissions, except if the stationary RICE is being tested at a stationary RICE test cell/stand.

(a) A stationary RICE is any internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. Stationary RICE differ from mobile RICE in that stationary RICE are not self-propelled, are not intended to be propelled while performing their function, or are not portable or transportable as that term is identified in the definition of non-road engine at 40 CFR 89.2.

(b) A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year, except that for oil and gas production facilities, a major source of HAP emissions is determined for each surface site.

§ 63.6590 What parts of my plant does this subpart cover?

This subpart applies to each affected source.

(a) *Affected source.* An affected source is any existing, new, or reconstructed stationary RICE located at a major source of HAP emissions, excluding stationary RICE being tested at a stationary RICE test cell/stand.

(1) *Existing stationary RICE.* A stationary RICE is existing if you commenced construction or reconstruction of the stationary RICE before December 19, 2002. A change in ownership of an existing stationary RICE does not make that stationary RICE a new or reconstructed stationary RICE.

(2) *New stationary RICE.* A stationary RICE is new if you commenced construction of the stationary RICE after December 19, 2002.

(3) *Reconstructed stationary RICE.* A stationary RICE is reconstructed if you meet the definition of reconstruction in § 63.2 and reconstruction is commenced after December 19, 2002.

(b) *Exceptions.* (1) A stationary RICE which meets either of the criteria in paragraph (b)(1)(i) or (ii) of this section does not have to meet the requirements of this subpart and of subpart A of this part except for the initial notification requirements of § 63.6645(d).

(i) The stationary RICE is an emergency power/limited use unit; or

(ii) The stationary RICE combusts digester gas or landfill gas as the primary fuel.

(2) A stationary RICE which meets any of the criteria in paragraph (b)(2)(i) or (ii) of this section does not have to meet the requirements of this subpart and of subpart A of this part.

(i) The stationary RICE is an existing spark ignition 2 stroke lean burn (2SLB), an existing spark ignition 4 stroke lean burn (4SLB), or a compression ignition (CI) stationary RICE; or

(ii) The stationary RICE has a manufacturer's nameplate rating of less than or equal to 500 brake horsepower.

§ 63.6595 When do I have to comply with this subpart?

(a) *Affected sources.* (1) If you have an existing stationary RICE, you must comply with the applicable emission limitations and operating limitations no later than [3 years after the date of publication of the final rule in the **Federal Register**].

(2) If you start up your new or reconstructed stationary RICE before [date of publication of the final rule in the **Federal Register**], you must comply with the applicable emission limitations and operating limitations in this subpart no later than [date of publication of the final rule in the **Federal Register**].

(3) If you start up your new or reconstructed stationary RICE after [date of publication of the final rule in the **Federal Register**], you must comply with the applicable emission limitations and operating limitations in this subpart upon startup of your affected source.

(b) *Area sources that become major sources.* If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, any existing, new, or reconstructed stationary RICE must be in compliance with this subpart when the area source becomes a major source.

(c) If you own or operate an affected RICE, you must meet the applicable notification requirements in § 63.6645 and in 40 CFR part 63, subpart A.

Emission and Operating Limitations

§ 63.6600 What emission limitations and operating limitations must I meet?

(a) If you own or operate an existing, new, or reconstructed spark ignition 4 stroke rich burn (4SRB) stationary RICE located at a major source of HAP emissions, you must comply with the emission limitations in Table 1(a) of this subpart and the operating limitations in Table 1(b) of this subpart which apply to you.

(b) If you own or operate a new or reconstructed 2SLB or 4SLB stationary RICE or a new or reconstructed CI

stationary RICE located at a major source of HAP emissions, you must comply with the emission limitations in Table 2(a) of this subpart and the operating limitations in Table 2(b) of this subpart which apply to you.

(c) If you own or operate: an existing 2SLB stationary RICE, 4SLB stationary RICE, or a CI stationary RICE; a stationary RICE that combusts digester gas or landfill gas as the primary fuel; an emergency power/limited use stationary RICE; a stationary RICE with a manufacturer's nameplate rating of 500 brake horsepower or less; or a stationary RICE which is being tested at a stationary RICE test cell/stand, you do not need to comply with the emission limitations in Tables 1(a) and 2(a) of this subpart or operating limitations in Tables 1(b) and 2(b) of this subpart.

General Compliance Requirements

§ 63.6605 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and operating limitations in this subpart that apply to you at all times, except during periods of startup, shutdown, and malfunction.

(b) If you must comply with emission limitations and operating limitations, you must operate and maintain your stationary RICE, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at all times, including during startup, shutdown, and malfunction.

Testing and Initial Compliance Requirements

§ 63.6610 By what date must I conduct the initial performance tests or other initial compliance demonstrations?

You must conduct the initial performance test or other initial compliance demonstrations in Table 4 of this subpart that apply to you within 180 calendar days after the compliance date that is specified for your stationary RICE in § 63.6595 and according to the provisions in § 63.7(a)(2).

§ 63.6615 When must I conduct subsequent performance tests?

If you must comply with the emission limitations and operating limitations, you must conduct subsequent performance tests as specified in Table 3 of this subpart.

§ 63.6620 What performance tests and other procedures must I use?

(a) You must conduct each performance test in Tables 3 and 4 of this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions that this subpart specifies in Table 4.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(e)(1) You must use Equation 1 of this section to determine compliance with the percent reduction requirement:

$$\frac{C_i - C_o}{C_i} \times 100 = R \qquad \text{(Eq. 1)}$$

Where:

C_i = concentration of CO or formaldehyde at the control device inlet,

C_o = concentration of CO or formaldehyde at the control device outlet, and

R = percent reduction of CO or formaldehyde emissions.

(2) You must normalize the carbon monoxide (CO) or formaldehyde concentrations at the inlet and outlet of the oxidation catalyst or non-selective catalytic reduction (NSCR) (whichever applies to you) to a dry basis and to 15 percent oxygen, or an equivalent percent carbon dioxide (CO_2) if you are using a continuous emissions monitoring system (CEMS).

(f) If you comply with the emission limitation to limit the concentration of formaldehyde in the stationary RICE exhaust, you must petition the Administrator for additional operating limitations to be established during the initial performance test and continuously monitored thereafter; or for approval of no additional operating limitations. You must not conduct the initial performance test until after the petition has been approved by the Administrator.

(g) If you comply with the emission limitation to limit the concentration of formaldehyde in the stationary RICE exhaust and you petition the Administrator for approval of additional operating limitations, your petition must include the information described in paragraphs (g)(1) through (5) of this section.

(1) Identification of the specific parameters you propose to use as additional operating limitations;

(2) A discussion of the relationship between these parameters and HAP emissions, identifying how HAP emissions change with changes in these parameters, and how limitations on these parameters will serve to limit HAP emissions;

(3) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the limits on these parameters in the operating limitations;

(4) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and

(5) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

(h) If you comply with the emission limitation to limit the concentration of formaldehyde in the stationary RICE exhaust and you petition the Administrator for approval of no additional operating limitations, your petition must include the information described in paragraphs (h)(1) through (7) of this section.

(1) Identification of the parameters associated with operation of the stationary RICE and any emission control device which could change intentionally (*e.g.*, operator adjustment, automatic controller adjustment, *etc.*) or unintentionally (*e.g.*, wear and tear, error, *etc.*) on a routine basis or over time;

(2) A discussion of the relationship, if any, between changes in the parameters and changes in HAP emissions;

(3) For the parameters which could change in such a way as to increase HAP emissions, a discussion of whether establishing limitations on the parameters would serve to limit HAP emissions;

(4) For the parameters which could change in such a way as to increase HAP emissions, a discussion of how you could establish upper and/or lower values for the parameters which would establish limits on the parameters in operating limitations;

(5) For the parameters, a discussion identifying the methods you could use to measure them and the instruments you could use to monitor them, as well as the relative accuracy and precision of the methods and instruments;

(6) For the parameters, a discussion identifying the frequency and methods for recalibrating the instruments you could use to monitor them; and

(7) A discussion of why, from your point of view, it is infeasible or unreasonable to adopt the parameters as operating limitations.

§ 63.6625 What are my monitoring installation, operation, and maintenance requirements?

(a) If you are required to install a CEMS as specified in Table 5 of this subpart, you must install, operate, and maintain a CEMS to monitor CO and either oxygen or CO_2 at both the inlet and the outlet of the oxidation catalyst according to the requirements in paragraphs (a)(1) through (4) of this section.

(1) Each CEMS must be installed, operated, and maintained according to the applicable performance specifications of 40 CFR part 60, appendix B.

(2) You must conduct an initial performance evaluation and an annual relative accuracy test audit (RATA) of each CEMS according to the requirements in § 63.8 and according to the applicable performance specifications of 40 CFR part 60, appendix B as well as daily and periodic data quality checks in accordance with 40 CFR part 60, appendix F, procedure 1.

(3) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. You must have at least two data points, with each representing a different 15-minute period, to have a valid hour of data.

(4) The CEMS data must be reduced as specified in § 63.8(g)(2) and recorded in parts per million or parts per billion (as appropriate for the applicable limitation) at 15 percent oxygen or the equivalent CO_2 concentration.

(b) If you are required to install a continuous parameter monitoring system (CPMS) as specified in Table 5 of this subpart, you must install, operate, and maintain each CPMS according to the requirements in § 63.8.

§ 63.6630 How do I demonstrate initial compliance with the emission limitations and operating limitations?

(a) You must demonstrate initial compliance with each emission and operating limitation that applies to you according to Table 5 of this subpart.

(b) During the initial performance test, you must establish each operating limitation in Tables 1(b) and 2(b) of this subpart that applies to you.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6645.

Continuous Compliance Requirements

§ 63.6635 How do I monitor and collect data to demonstrate continuous compliance?

(a) If you must comply with emission and operating limitations, you must monitor and collect data according to this section.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously at all times that the stationary RICE is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling the minimum data availability requirement. You must, however, use all the valid data collected during all other periods.

§ 63.6640 How do I demonstrate continuous compliance with the emission limitations and operating limitations?

(a) You must demonstrate continuous compliance with each emission limitation and operating limitation in Tables 1(a) and 1(b) and Tables 2(a) and 2(b) of this subpart that apply to you according to methods specified in Table 6 of this subpart.

(b) You must report each instance in which you did not meet each emission limitation or operating limitation in Tables 1(a) and 1(b) and Tables 2(a) and 2(b) of this subpart that apply to you. These instances are deviations from the emission and operating limitations in this subpart. These deviations must be reported according to the requirements in § 63.6650. If you change your catalyst (*i.e.*, replace catalyst elements), you must reestablish the values of the operating parameters measured during the initial performance test. When you reestablish the values of your operating parameters, you must also conduct a performance test to demonstrate that you are meeting the required CO or formaldehyde percent reduction applicable to your stationary RICE.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations from the emission or operating limitations that occur during a period of startup, shutdown, or malfunction are not violations.

(e) If you are complying with the requirement to limit the formaldehyde concentration, you must conduct performance tests as shown in Table 4 of this subpart. Following the initial performance test, subsequent performance tests must be conducted at the lowest load. You must also conduct a performance test and reestablish the minimum load or minimum fuel flow rate if you want to operate the stationary RICE at a load or fuel flow rate lower than that established during the initial performance test.

(f) You must also report each instance in which you did not meet the requirements in Table 8 of this subpart that apply to you. If you own or operate an existing 2SLB stationary RICE, existing 4SLB stationary RICE, or a CI stationary RICE, or a stationary RICE with a manufacturer's nameplate rating of 500 brake horsepower or less, you do not need to comply with the requirements in Table 8 of this subpart. If you own or operate a stationary RICE that combusts digester gas or landfill gas as the primary fuel or an emergency power/limited use stationary RICE, you do not need to comply with the requirements in Table 8 of this subpart, except for the initial notification requirements.

Notifications, Reports, and Records

§ 63.6645 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f)(4) and (f)(6), 63.9(b) through (e), and (g) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you must comply with the emission and operating limitations, and you start up your stationary RICE before [the effective date of this subpart], you must submit an Initial Notification not later than [120 days after date of publication of the final rule in the **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed stationary RICE on or after the [date of publication of the final rule in the **Federal Register**], you must submit an Initial Notification not later than 120 days after you become subject to this subpart.

(d) If you are required to submit an Initial Notification but are otherwise not affected by the requirements of this subpart, in accordance with § 63.6590(b), your notification should include the information in § 63.9(b)(2)(i) through (v), and a statement that your stationary RICE has no additional requirements and explain the basis of the exclusion (for example, that it operates exclusively as an emergency/limited use stationary RICE).

(e) If you are required to conduct a performance test, you must submit a Notification of Intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(f) If you are required to conduct a performance test or other initial compliance demonstration as specified in Tables 4 and 5 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration required in Table 5 of this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Table 5 of this subpart that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.6650 What reports must I submit and when?

(a) You must submit each report in Table 7 of this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 7 of this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first Compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.6595 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.6595.

(2) The first Compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.6595.

(3) Each subsequent Compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent Compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each stationary RICE that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent Compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The Compliance report must contain the information in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission or operating limitations that apply to you, a statement that there were no deviations from the emission or operating limitations during the reporting period.

(6) If there were no periods during which the continuous monitoring system (CMS), including CEMS and CPMS, was out-of-control, as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emission or operating limitation that occurs for a stationary RICE where you are not using a CMS to comply with the emission or operating limitations in this subpart, the Compliance report must contain the information in paragraphs (c)(1) through (4) of this section and the information in paragraphs (d)(1) and (2) of this section.

(1) The total operating time of the stationary RICE at which the deviation occurred during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from an emission or operating limitation occurring for a stationary RICE where you are using a CMS to comply with the emission and operating limitations in this subpart, you must include information in paragraphs (c)(1) through (4) and (e)(1) through (12) of this section.

(1) The date and time that each malfunction started and stopped.

(2) The date, time, and duration that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total operating time of the stationary RICE at which the CMS downtime occurred during that reporting period.

(8) An identification of each parameter and pollutant (CO or formaldehyde) that was monitored at the stationary RICE.

(9) A brief description of the stationary RICE.

(10) A brief description of the CMS.

(11) The date of the latest CMS certification or audit.

(12) A description of any changes in CMS, processes, or controls since the last reporting period.

(f) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a Compliance report pursuant to Table 7 of this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the Compliance report includes all required information concerning deviations from any emission or operating limitation in this subpart, submission of the Compliance report shall be deemed to satisfy any obligation to report the same deviations

in the semiannual monitoring report. However, submission of a Compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

§ 63.6655 What records must I keep?

(a) If you must comply with the emission and operating limitations, you must keep the records described in paragraphs (a)(1) through (a)(3), (b)(1) through (b)(3) and (c) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirement in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) For each CEMS or CPMS, you must keep the records listed in paragraphs (b)(1) through (3) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (*i.e.*, superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Requests for alternatives to the relative accuracy test for CEMS or CPMS as required in § 63.8(f)(6)(i), if applicable.

(c) You must keep the records required in Table 6 of this subpart to show continuous compliance with each emission or operating limitation that applies to you.

§ 63.6660 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.6665 What parts of the General Provisions apply to me?

Table 8 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you. If you own or operate an existing 2SLB, an existing 4SLB stationary RICE, an existing CI stationary RICE, or a stationary RICE with a manufacturer's nameplate rating of 500 brake horsepower or less, you do not need to comply with any of the requirements of the General Provisions. If you own or operate a stationary RICE that combusts digester gas or landfill gas as the primary fuel or is an emergency power/limited use stationary RICE, you do not need to comply with the requirements in the General Provisions except for the initial notification requirements.

§ 63.6670 Who implements and enforces this subpart?

(a) This subpart is implemented and enforced by the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the U.S. EPA) has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out whether this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are:

(1) Approval of alternatives to the non-opacity emission limitations and operating limitations in § 63.6600 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.6675 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA); in 40 CFR 63.2, the General Provisions of this part; and in this section as follows:

Area source means any stationary source of HAP that is not a major source as defined in part 63.

Associated equipment as used in this subpart and as referred to in section 112(n)(4) of the CAA, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the well bore to the point of custody transfer, except glycol dehydration units, storage vessels with potential for flash emissions, combustion turbines, and stationary RICE.

CAA means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Public Law 101–549, 104 Stat. 2399).

Compression ignition engine means any stationary RICE in which a high boiling point liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition, including diesel engines and dual-fuel engines.

Custody transfer means the transfer of hydrocarbon liquids or natural gas: after processing and/or treatment in the producing operations, or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation. For the purposes of this subpart, the point at which such liquids or natural gas enters a natural gas processing plant is a point of custody transfer.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation or operating limitation;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation or operating limitation in this subpart during malfunction, regardless or whether or not such failure is permitted by this subpart.

Diesel engine means any stationary RICE in which a high boiling point liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition. This process is also known as compression ignition.

Diesel fuel means any liquid obtained from the distillation of petroleum with a boiling point of approximately 150 to 360 degrees Celsius. One commonly used form is fuel oil number 2.

Digester gas means any gaseous by-product of wastewater treatment formed through the anaerobic decomposition of organic waste materials and composed principally of methane and CO_2.

Dual-fuel engine means any stationary RICE in which a liquid fuel (typically diesel fuel) is used for compression ignition and gaseous fuel (typically natural gas) is used as the primary fuel.

Emergency power/limited use stationary RICE means any stationary RICE that operates as a mechanical or electrical power source when the primary power source for a facility has been rendered inoperable by an emergency situation. Examples include stationary RICE used when electric power from the local utility is interrupted, stationary RICE used to pump water in the case of fire or flood, etc. Emergency power/limited use units also include units that operate less than 50 hours per year in non-emergency situations, including certain peaking units at electric facilities and stationary RICE at industrial facilities.

Four-stroke engine means any type of engine which completes the power cycle in two crankshaft revolutions, with intake and compression strokes in the first revolution and power and exhaust strokes in the second revolution.

Gaseous fuel means a material used for combustion which is normally a gas with a heating value at standard temperature and pressure.

Hazardous air pollutants (HAP) means any air pollutants listed in or pursuant to section 112(b) of the CAA.

ISO standard day conditions means 288 degrees Kelvin (15 degrees Celsius), 60 percent relative humidity and 101.3 kilopascals pressure.

Landfill gas means a gaseous by-product of the land application of municipal refuse formed through the anaerobic decomposition of waste materials and composed principally of methane and CO_2.

Lean burn engine means any two-stroke or four-stroke engine where the manufacturer's recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio is greater than 1.1.

Liquefied petroleum gas means any liquefied hydrocarbon gas obtained as a by-product in petroleum refining of natural gas production.

Liquid fuel means any fuel in liquid form at standard temperature and pressure, including but not limited to diesel, residual/crude oil, kerosene/naphtha (jet fuel), and gasoline.

Major Source, as used in this subpart, shall have the same meaning as in § 63.2, except that:

(1) Emissions from any oil or gas exploration or production well (with its associated equipment (as defined in this section)) and emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, to determine whether such emission points or stations are major sources, even when emission points are in a contiguous area or under common control except when they are on the same surface site;

(2) For oil and gas production facilities, emissions from processes, operations, or equipment that are not part of the same oil and gas production facility, as defined in this section, shall not be aggregated; and

(3) For production field facilities, only HAP emissions from glycol dehydration units, storage tanks with flash emissions potential, combustion turbines and reciprocating internal combustion engines shall be aggregated for a major source determination.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Natural gas means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the Earth's surface, of which the principal constituent is methane. May be field or pipeline quality.

Non-selective catalytic reduction (NSCR) means an add-on catalytic nitrogen oxides (NO_X) control device for rich burn engines that, in a two-step reaction, promotes the conversion of excess oxygen, NO_X, CO, and volatile organic compounds (VOC) into CO_2, nitrogen, and water.

Oil and gas production facility as used in this subpart means any grouping of equipment where hydrocarbon liquids are processed, upgraded (*i.e.,* remove impurities or other constituents to meet contract specifications), or stored prior to the point of custody transfer; or where natural gas is processed, upgraded, or stored prior to entering the natural gas transmission and storage source category. For purposes of a major source determination, facility (including a building, structure, or installation) means oil and natural gas production and processing equipment that is located within the boundaries of an individual surface site as defined in this section. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Pieces of production equipment or groupings of equipment located on different oil and gas leases, mineral fee tracts, lease tracts, subsurface or surface unit areas, surface fee tracts, surface lease tracts, or separate surface sites, whether or not connected by a road, waterway, power line or pipeline, shall not be considered part of the same facility. Examples of facilities in the oil and natural gas production source category include, but are not limited to, well sites, satellite tank batteries, central tank batteries, a compressor station that transports natural gas to a natural gas processing plant, and natural gas processing plants.

Oxidation catalyst means an add-on catalytic control device for lean burn engines that controls CO and VOC by oxidation.

Peaking unit or engine means any standby engine intended for use during periods of high demand that are not emergencies.

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Production field facility means those oil and gas production facilities located prior to the point of custody transfer.

Propane means a colorless gas derived from petroleum and natural gas, with the molecular structure C_3H_8, suitable for use in spark-ignited internal combustion engines.

Responsible official means responsible official as defined in 40 CFR 70.2.

Rich burn engine means any four-stroke spark ignited engine where the manufacturer's recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio is less than or equal to 1.1.

Spark ignition engine means a type of engine in which a compressed air/fuel mixture is ignited by a timed electric spark generated by a spark plug.

Stationary reciprocating internal combustion engine (RICE) means any reciprocating internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. Stationary RICE differ from mobile RICE in that stationary RICE are not self propelled, are not intended to be propelled while performing their function, or are not portable or transportable as that term is identified

in the definition of non-road engine at 40 CFR 89.2.

Stationary RICE test cell/stand means an engine test cell/stand, as defined in subpart PPPPP of this part, that tests stationary RICE.

Stoichiometric means the theoretical air-to-fuel ratio required for complete combustion.

Subpart means 40 CFR part 63, subpart ZZZZ.

Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

Two-stroke engine means a type of engine which completes the power cycle in single crankshaft revolution by combining the intake and compression operations into one stroke and the power and exhaust operations into a second stroke. This system requires auxiliary scavenging and inherently runs lean of stoichiometric.

Tables to Subpart ZZZZ of Part 63

TABLE 1A TO SUBPART ZZZZ OF PART 63.—EMISSION LIMITATIONS FOR EXISTING, NEW, AND RECONSTRUCTED SPARK IGNITION, 4SRB STATIONARY RICE

[As stated in §§ 63.6600 and 63.6640, you must comply with the following emission limitations for existing, new and reconstructed 4SRB stationary RICE]

For each . . .	You must meet *one* of the following emission limitations . . .
1. 4SRB stationary RICE	a. Reduce formaldehyde emissions by 75 percent or more, if you use NSCR; or b. Limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O_2, if you use means other than NSCR to reduce HAP emissions.

TABLE 1B TO SUBPART ZZZZ OF PART 63.—OPERATING LIMITATIONS FOR EXISTING, NEW, AND RECONSTRUCTED SPARK IGNITION, 4SRB STATIONARY RICE

[As stated in §§ 63.6600, 63.6630 and 63.6640, you must comply with the following operating emission limitations for existing, new and reconstructed 4SRB stationary RICE]

For each . . .	You must meet the following operating limitation . . .
1. 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 75 percent or more using NSCR.	a. Maintain your catalyst so that the pressure drop across the catalyst does not change by more than two inches of water from the pressure drop across the catalyst measured during the initial performance test; and b. Maintain your catalyst so that the temperature rise across the catalyst is no more than 5 percent different from the temperature rise across the catalyst measured during the initial performance test; and c. Maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 750°F and less than or equal to 1250°F.
2. 4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O_2 using means other than NSCR to reduce emissions.	a. Maintain an operating load equal to or greater than 95 percent of the operating load established during the initial performance test; or b. Maintain a fuel flow rate equal to or greater than 95 percent of the fuel flow rate established during the initial performance test; and c. You must comply with any additional operating limitations approved by the Administrator.

TABLE 2A TO SUBPART ZZZZ OF PART 63.—EMISSION LIMITATIONS FOR NEW AND RECONSTRUCTED LEAN BURN AND COMPRESSION IGNITION STATIONARY RICE

[As stated in §§ 63.6600 and 63.6640, you must comply with the following emission limitations for new and reconstructed lean burn and compression ignition stationary RICE]

For each . . .	You must meet the following emission limitation . . .
1. 2SLB stationary RICE	a. Reduce CO emissions by 60 percent or more, if you use an oxidation catalyst; or b. Limit concentration of formaldehyde in the stationary RICE exhaust to 17 ppmvd or less at 15 percent O_2, if you use some means other than an oxidation catalyst to reduce emissions.
2. 4SLB stationary RICE	a. Reduce CO emissions by 93 percent or more, if you use an oxidation catalyst; or b. Limit concentration of formaldehyde in the stationary RICE exhaust to 14 ppmvd or less at 15 percent O_2, if you use some means other than an oxidation catalyst to reduce emissions.
3. CI stationary RICE	a. Reduce CO emissions by 70 percent or more, if you use an oxidation catalyst; or

TABLE 2A TO SUBPART ZZZZ OF PART 63.—EMISSION LIMITATIONS FOR NEW AND RECONSTRUCTED LEAN BURN AND COMPRESSION IGNITION STATIONARY RICE—Continued

[As stated in §§ 63.6600 and 63.6640, you must comply with the following emission limitations for new and reconstructed lean burn and compression ignition stationary RICE]

For each . . .	You must meet the following emission limitation . . .
	b. Limit concentration of formaldehyde in the stationary RICE exhaust to 580 ppbvd or less at 15 percent O_2, if you use some means other than an oxidation catalyst to reduce emissions.

TABLE 2B TO SUBPART ZZZZ OF PART 63.—OPERATING LIMITATIONS FOR NEW AND RECONSTRUCTED LEAN BURN AND COMPRESSION IGNITION STATIONARY RICE

[As stated in §§ 63.6600, 63.6630, and 63.6640, you must comply with the following operating limitations for new and reconstructed lean burn and compression ignition stationary RICE]

For each . . .	You must meet the following operating limitation . . .
1. 2SLB and 4SLB stationary RICE and CI stationary RICE with a brake horsepower <5000 complying with the requirement to reduce CO emissions using an oxidation catalyst.	a. Maintain your catalyst so that the pressure drop across the catalyst does not change by more than two inches of water from the pressure drop across the catalyst that was measured during the initial performance test; and b. Maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 500°F and less than or equal to 1250°F.
2. 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust.	a. Maintain an operating load equal to or greater than 95 percent of the operating load established during the initial performance test; or b. Maintain a fuel flow rate equal to or greater than 95 percent of the fuel flow rate established during the initial performance test; and c. You must comply with any additional operating limitations approved by the Administrator.

TABLE 3 TO SUBPART ZZZZ OF PART 63.—SUBSEQUENT PERFORMANCE TESTS

[As stated in §§ 63.6615 and 63.6620, you must comply with the following subsequent performance test requirements]

For each . . .	Complying with the requirement to . . .	You must . . .
1. 2SLB and 4SLB stationary RICE and CI stationary RICE with a brake horsepower <5000.	Reduce CO emissions if using an oxidation catalyst.	Conduct subsequent performance tests quarterly.
2. 4SRB stationary RICE with a brake horsepower ≥5000.	Reduce formaldehyde emissions 75 percent or more using NSCR.	Conduct subsequent performance tests semiannually [a].
3. Stationary RICE (all stationary RICE subcategories and all brake horsepower ratings).	Limit the concentration of formaldehyde in the stationary RICE exhaust, if using means other than an oxidation catalyst or NSCR.	Conduct subsequent performance tests semiannually [a].

[a] After you have demonstrated compliance for two consecutive tests, you may reduce the frequency of subsequent performance tests to annually. If the results of any subsequent annual performance test indicate the stationary RICE is not in compliance with the formaldehyde emission limitation, or you deviate from any of your operating limitations, you must resume semiannual performance tests.

TABLE 4 TO SUBPART ZZZZ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

[As stated in §§ 63.6610, 63.6620, and 63.6640, you must comply with the following requirements for performance tests]

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
1. 2SLB and 4SLB stationary RICE and CI stationary RICE with a brake horsepower <5000.	a. Reduce CO emissions if using an oxidation catalyst.	i. Measure the O_2 at the inlet and outlet of the oxidation catalyst. and	(1) Portable CO and O_2 analyzer.	(a) Using ASTM D6522–00 [b]. Measurements to determine O_2 must be made at the same time as the measurements for CO concentration.
		ii. Measure the CO at the inlet and the outlet of the oxidation catalyst.	(1) Portable CO and O_2 analyzer.	(a) Using ASTM D6522–00 [b]. The CO concentration must be at 15 percent O_2, dry basis.
2. 4SRB stationary RICE ..	a. Reduce formaldehyde emissions by 75 percent or more using NSCR.	i. Select the sampling port location and the number of traverse points. and	(1) Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).	(a) Sampling sites must be located at the inlet and outlet of the NSCR.

TABLE 4 TO SUBPART ZZZZ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in §§ 63.6610, 63.6620, and 63.6640, you must comply with the following requirements for performance tests]

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
		ii. Measure O_2 at the inlet and outlet of the control device. and	(1) Method 3A and 3B of 40 CFR part 60, appendix A.	(a) Measurements to determine O_2 concentration must be made at the same time as the measurements for formaldehyde concentration.
		iii. Measure moisture content at the inlet and outlet of the NSCR. and	(1) Method 4 of 40 CFR part 60, appendix A.	(a) Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde concentration.
		iv. Measure formaldehyde at the inlet and the outlet of the NSCR.	(1) Method 320 or 323 of 40 CFR part 63, appendix A, EPA SW–846 Method 0011 or Method CARB 430 [a].	(a) Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
3. Stationary RICE	a. Limit the concentration of formaldehyde in the stationary RICE exhaust.	i. Select the sampling port location and the number of traverse points. and	(1) Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary RICE exhaust at the sampling port location. and	(1) Method 3A or 3B of 40 CFR part 60, appendix A.	(a) Measurements to determine O_2 concentration must be made at the same time and location as the measurements for formaldehyde concentration.
		iii. Measure moisture content of the stationary RICE exhaust at the sampling port location. and	(1) Method 4 of 40 CFR part 60, appendix A.	(a) Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde concentration.
		iv. Measure formaldehyde at the exhaust of the stationary RICE.	(1) Method 320 or 323 of 40 CFR part 63, appendix A; or Method CARB 430 [a] (spark ignition 4SRB stationary RICE only); or EPA SW–846 Method 0011.	(a) The stationary RICE must be operating at the lowest operating load at which you will operate the stationary RICE; and Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

[a] You may obtain a copy of ARB Method 430 from the California Environmental Protection Agency, Air Resources Board, 2020 L Street, Sacramento, CA 95812, or you may download a copy of ARB Method 430 from ARB's web site (*http://www.arb.ca.gov/testmeth/vol3/vol3.htm*).

[b] You may also use Methods 3A and 10 as options to ASTM–D6522–00. You may obtain a copy of ASTM–D6522–00 from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohochen, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

TABLE 5 TO SUBPART ZZZZ OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND OPERATING LIMITATIONS

[As stated in §§ 63.6625 and 63.6630, you must initially comply with the emission and operating limitations as required by the following]

For each . . .	Complying with the requirement to . . .	You have demonstrated initial compliance if . . .
1. 2SLB and 4SLB stationary RICE and CI stationary RICE with a brake horsepower <5000.	a. Reduce CO emissions if using an oxidation catalyst.	i. The average reduction of emissions of CO determined from the initial performance test achieves the required CO percent reduction; and ii. You have installed a CPMS to continuously monitor catalyst pressure drop and catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
2. 2SLB and 4SLB stationary RICE and CI stationary RICE with a brake horsepower ≥5000.	a. Reduce CO emissions if using an oxidation catalyst.	i. You have installed a CEMS to continuously monitor CO and either O_2 or CO_2 at both the inlet and outlet of the oxidation catalyst according to the requirements in § 63.6625(a); and ii. You have conducted a performance evaluation of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B; and iii. The average reduction of CO calculated using § 63.6620 equals or exceeds the required percent reduction. The initial test comprises the first 4-hour period after successful validation of the CEMS. Compliance is based on the average percent reduction achieved during the 4-hour period.
3. 4SRB stationary RICE	a. Reduce formaldehyde emissions if using NSCR.	i. The average reduction of emissions of formaldehyde determined from the initial performance test is equal to or greater than the required formaldehyde percent reduction; and ii. You have installed a CPMS to continuously monitor catalyst pressure drop and catalyst temperature rise according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop, catalyst inlet temperature and catalyst temperature rise during the initial performance test.
4. Stationary RICE	a. Limit the concentration of formaldehyde in the stationary RICE exhaust.	i. The average formaldehyde concentration, corrected to 15 percent O_2, dry basis, from the three test runs is less than or equal to the formaldehyde emission limitation; and ii. You have installed a CPMS to continuously monitor stationary RICE operating load or fuel flow rate according to the requirements in § 63.6625(b); and iii. You have recorded the average stationary RICE operating load or fuel flow rate during the initial performance test.

TABLE 6 TO SUBPART ZZZZ OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND OPERATING LIMITATIONS

[As stated in § 63.6640, you must continuously comply with the emissions and operating limitations as required by the following]

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
1. 2SLB and 4SLB stationary RICE and CI stationary RICE with a brake horsepower <5000.	a. Reduce CO emissions if using an ozidation catalyst.	i. Conducting quarterly performance tests for CO to demonstrate that the required CO percent reduction is achieved; and ii. Collecting the catalyst pressure drop and catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the pressure drop across the catalyst and the catalyst inlet temperature established during the initial performance test.
2. 2SLB and 4SLB stationary RICE and CI stationary RICE with a brake horsepower ≥5000.	a. Reduce CO emissions if using an oxidation catalyst.	i. Collecting the monitoring data according to § 63.6625(a), reducing the measurements to 1-hour averages, calculating the percent reduction of CO emissions according to § 63.6620; and ii. Demonstrating that the oxidation catalyst achieves the required percent reduction of CO emissions over the 4-hour averaging period; and

TABLE 6 TO SUBPART ZZZZ OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND OPERATING LIMITATIONS—Continued

[As stated in § 63.6640, you must continuously comply with the emissions and operating limitations as required by the following]

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
		iii. Conducting an annual RATA of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B, as well as daily and periodic data quality checks in accordance with 40 CFR part 60, appendix F, procedure 1.
3. Spark ignition, 4SRB stationary RICE	a. Reduce formaldehyde emissions if using NSCR.	i. Collecting the pressure drop across the catalyst, the catalyst inlet temperature and the temperature rise across the catalyst data according to § 63.6625(b); and ii. Reducing these data to 4-hour rolling averages; and iii. Maintaining the 4-hour rolling averages within the operating limitations for pressure drop across the catalyst, the catalyst inlet temperature and temperature rise across the catalyst established during the performance test.
4. 4SRB stationary RICE with a brake horsepower ≥5000.	Reduce formaldehyde emissions if using NSCR.	Conducting semiannual performance tests for formaldehyde to demonstrate that the required formaldehyde percent reduction horsepower is achieved [a]
5. Stationary RICE	a. Limit the concentration of formaldehyde in the stationary RICE exhaust.	i. Conducting semiannual performance tests for formaldehyde to demonstrate that your emissions remain at or below the formaldehyde concentration limit [a]; and ii. Collecting the operating load or fuel flow data; and iii. Reducing operating load or fuel flow data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages equal to or greater than 95 percent of the operating limitations established during the initial performance test.

[a] After you have demonstrated compliance for two consecutive tests, you may reduce the frequency of subsequent performance tests to annually. If the results of any subsequent annual performance test indicate the stationary RICE is not in compliance with the formaldehyde emission limitation, or you deviate from any of your operating limitations, you must resume semiannual performance tests.

TABLE 7 TO SUBPART ZZZZ OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.6650, you must comply with the following requirements for reports]

You must submit a (n)	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. If there are no deviations from any emission limitations or operating limitations that apply to you, a statement that there were no deviations from the emission limitations or operating limitations during the reporting period. If there were no periods during which the CMS, including CEMS and CPMS, was out-of-control, as specified in § 63.8(c)(7), a statement that there were not periods during which the CMS was out-of-control during the reporting period.	i. Semiannually according to the requirements in § 63.6650(b).
	or	
	b. If you had a deviation from any emission limitation or operating limitation during the reporting period, the information in § 63.6650(d). If there were periods during which the CMS, including CEMS and CPMS, was out-of-control, as specified in § 63.8(c)(7), the information in § 63.6650(e).	i. Semiannually according to the requirements in § 63.6650(b).
	or	
	c. If you had a startup, shutdown or malfunction during the reporting period, the information in § 63.10(d)(5)(i).	i. Semiannually according to the requirements in § 63.6650(b).
2. An immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period.	a. Actions taken for the event and	i. by fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii)	i. By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authorities. (§ 63.10(d)(5)(ii)).

TABLE 8 TO SUBPART ZZZZ OF PART 63 APPLICABILITY OF GENERAL PROVISIONS TO SUBPART ZZZZ

[As stated in § 63.6665, you must comply with the following applicable general provisions:]

General provisions citation	Subject of citation	Applies to Subpart	Explanation
1. § 63.1	General applicability of the General Provisions.	Yes.	
2. § 63.2	Definitions	Yes	Additional terms defined in § 63.6675.
3. § 63.3	Units and abbreviations	Yes.	
4. § 63.4	Prohibited activities and circumvention.	Yes.	
5. § 63.5	Construction and reconstruction	Yes.	
6. § 63.6(a)	Applicability	Yes.	
7. § 63.6(b)(1)–(4)	Compliance dates for new and reconstructed sources.	Yes.	
8. § 63.6(b)(5)	Notification	Yes.	
9. § 63.6(b)(6)	[Reserved]	Yes.	
10. § 63.6(b)(7)	Compliance dates for new and reconstructed area sources that become major sources.	Yes.	
11. § 63.6(c)(1)–(2)	Compliance dates for existing sources.	Yes.	
12. § 63.6(c)(3)–(4)	[Reserved]	Yes.	
13. § 63.6(c)(5)	Compliance dates for existing area sources that become major sources.	Yes.	
14. § 63.6(d)	[Reserved]	Yes.	
15. § 63.6(e)(1)–(2)	Operation and maintenance	Yes.	
16. § 63.6(e)(3)	Startup, shutdown, and malfunction plan.	No	No requirement for a startup, shutdown and malfunction plan.
17. § 63.6(f)(1)	Applicability of standards except during startup shutdown malfunction (SSM).	Yes.	
18. § 63.6(f)(2)	Methods for determining compliance.	Yes.	
19. § 63.6(f)(3)	Finding of compliance	Yes.	
20. § 63.6(g)(1)–(3)	Use of alternate standard	Yes.	
21. § 63.6(h)	Opacity and visible emission standards.	No	Subpart ZZZZ, 40 CFR part 63, does not contain opacity or visible emission standards.
22. § 63.6(i)	Compliance extension procedures and criteria.	Yes.	
23. § 63.6(j)	Presidential compliance exemption.	Yes.	
24. § 63.7(a)(1)–(2)	Performance test dates	Yes.	
25. § 63.7(a)(3)	Section 114 authority	Yes.	
26. § 63.7(b)(1)	Notification of performance test	Yes.	
27. § 63.7(b)(2)	Notification of rescheduling	Yes.	
28. § 63.7(c)	Quality assurance/test plan	Yes.	
29. § 63.7(d)	Testing facilities	Yes.	
30. § 63.7(e)(1)	Conditions for conducting performance tests.	Yes	Except that testing is required under lowest load conditions for some regulatory alternatives.
31. § 63.7(e)(2)	Conditions for conducting performance tests.	Yes.	
32. § 63.7(e)(3)	Test run duration	Yes.	
33. § 63.7(e)(4)	Administrator may require other testing under section 114 of the CAA.	Yes.	
34. § 63.7(f)	Alternative test method provisions	Yes.	
35. § 63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
36. § 63.7(h)	Waiver of tests	Yes.	
37. § 63.8(a)(1)	Applicability of monitoring requirements.	Yes	Subpart ZZZZ, 40 CFR part 63, contains specific requirements for monitoring at § 63.6625.
38. § 63.8(a)(2)	Performance specifications	Yes.	
39. § 63.8(a)(3)	[Reserved].		
40. § 63.8(a)(4)	Monitoring with flares	No.	
41. § 63.8(b)(1)	Monitoring	Yes.	
42. § 63.8(b)(2)–(3)	Multiple effluents and multiple monitoring systems.	Yes.	
43. § 63.8(c)(1)	Monitoring system operation and maintenance.	Yes.	
44. § 63.8(c)(1)(i)	Routine and predictable SSM	Yes.	

TABLE 8 TO SUBPART ZZZZ OF PART 63 APPLICABILITY OF GENERAL PROVISIONS TO SUBPART ZZZZ—Continued

[As stated in § 63.6665, you must comply with the following applicable general provisions:]

General provisions citation	Subject of citation	Applies to Subpart	Explanation
45. § 63.8(c)(1)(ii)	SSM not in Startup Shutdown Malfunction Plan.	Yes.	
46. § 63.8(c)(1)(iii)	Compliance with operation and maintenance requirements.	Yes.	
47. § 63.8(c)(2)–(3)	Monitoring system installation	Yes.	
48. § 63.8(c)(4)	Continuous monitoring system (CMS) requirements.	Yes	Except that Subpart ZZZZ, 40 CFR part 63, does not require Continuous Opacity Monitoring System (COMS).
49. § 63.8(c)(5)	COMS minimum procedures	No	Subpart ZZZZ, 40 CFR part 63, does not require COMS.
50. § 63.8(c)(6)–(8)	CMS requirements	Yes	Except that Subpart ZZZZ, 40 CFR part 63, does not require COMS.
51. § 63.8(d)	CMS quality control	Yes.	
52. § 63.8(e)	CMS performance evaluation	Yes	Except for § 63.8(e)(5)(ii), which applies to COMS.
53. § 63.8(f)(1)–(5)	Alternative monitoring method	Yes.	
54. § 63.8(f)(6)	Alternative to relative accuracy test.	Yes.	
55. § 63.8(g)	Data reduction	Yes	Except that provisions for COMS are not applicable. Averaging periods for demonstrating compliance are specified at §§ 63.6635 and 63.6640.
56. § 63.9(a)	Applicability and State delegation of notification requirements.	Yes.	
57. § 63.9(b)(1)–(5)	Initial notifications	Yes.	
58. § 63.9(c)	Request for compliance extension	Yes.	
59. § 63.9(d)	Notification of special compliance requirements for new sources.	Yes.	
60. § 63.9(e)	Notification of performance test	Yes.	
61. § 63.9(f)	Notification of visible emission (VE)/opacity test.	No.	
62. § 63.9(g)(1)	Notification of performance evaluation.	Yes.	
63. § 63.9(g)(2)	Notification of use of COMS data	No	Subpart ZZZZ, 40 CFR part 63, does not contain opacity or VE standards.
64. § 63.9(g)(3)	Notification that criterion for alternative to RATA is exceeded.	Yes	If alternative is in use.
65. § 63.9(h)(1)–(6)	Notification of compliance status	Yes	Except that notifications for sources using a CEMS are due 30 days after completion of performance evaluations.
66. § 63.9(i)	Adjustment of submittal deadlines	Yes.	
67. § 63.9(j)	Change in previous information	Yes.	
68. § 63.10(a)	Administrative provisions for record keeping/reporting.	Yes.	
69. § 63.10(b)(1)	Record retention	Yes.	
70. § 63.10(b)(2)(i)–(v)	Records related to SSM	Yes.	
71. § 63.10(b)(2)(vi)–(xi)	Records	Yes.	
72. § 63.10(b)(2)(xii)	Record when under waiver	Yes.	
73. § 63.10(b)(2)(xiii)	Records when using alternative to RATA.	Yes	For CO standard if using RATA alternative.
74. § 63.10(b)(2)(xiv)	Records of supporting documentation.	Yes.	
75. § 63.10(b)(3)	Records of applicability determination.	Yes.	
76. § 63.10(c)	Additional records for sources using CEMS.	Yes.	
77. § 63.10(d)(1)	General reporting requirements	Yes.	
78. § 63.10(d)(2)	Report of performance test results	Yes.	
79. § 63.10(d)(3)	Reporting opacity or VE observations.	No	Subpart ZZZZ, 40 CFR part 63, does not contain opacity or VE standards.
80. § 63.10(d)(4)	Progress reports	Yes.	
81. § 63.10(d)(5)	Startup, shutdown, and malfunction reports.	Yes.	
82. § 63.10(e)(1) and (2)(i)	Additional CMS reports	Yes.	

TABLE 8 TO SUBPART ZZZZ OF PART 63 APPLICABILITY OF GENERAL PROVISIONS TO SUBPART ZZZZ—Continued

[As stated in § 63.6665, you must comply with the following applicable general provisions:]

General provisions citation	Subject of citation	Applies to Subpart	Explanation
83. § 63.10(e)(2)(ii)	COMS-related report	No	Subpart ZZZZ, 40 CFR part 63, does not require COMS.
84. § 63.10(e)(3)	Excess emission and parameter exceedances reports.	Yes.	
85. § 63.10(e)(4)	Reporting COMS data	No	Subpart ZZZZ, 40 CFR part 63, does not require COMS.
86. § 63.10(f)	Waiver for recordkeeping/reporting.	Yes.	
87. § 63.11	Flares	No.	
88. § 63.12	State authority and delegations	Yes.	
89. § 63.13	Addresses	Yes.	
90. § 63.14	Incorporation by reference	Yes.	
91. § 63.15	Availability of information	Yes.	

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Federal Register

Thursday,
December 19, 2002

Part III

Department of State

New Conservation Measures for Antarctic Fishing Under the Auspices of CCAMLR; Notice

DEPARTMENT OF STATE

[Public Notice 4232]

New Conservation Measures for Antarctic Fishing Under the Auspices of CCAMLR

AGENCY: Department of State.
ACTION: Notice.

SUMMARY: At its Twenty-First Meeting in Hobart, Tasmania, October 21 to November 1, 2002, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area. All the measures were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. Measures adopted restrict overall catches of certain species of fish and crabs, restrict fishing in certain areas, specify implementation and inspection obligations supporting the Catch Documentation Scheme of Contracting Parties, and promote compliance with CCAMLR measures by non-Contracting Party vessels. This notice includes the full text of the conservation measures adopted at the Twenty-First meeting of CCAMLR. For all of the conservation measures in force, see the CCAMLR Web site at *http://www.ccamlr.org.* This notice, therefore, together with the U.S. regulations referenced under the **SUPPLEMENTARY INFORMATION** provides a comprehensive register of all current U.S. obligations under CCAMLR.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments within 30 days of this announcement.

FOR FURTHER INFORMATION CONTACT: Roberta L. Chew, Office of Oceans Affairs (OES/OA), Room 5805, Department of State, Washington, DC 20520; tel: 202–647–3947; fax: 202–647–9099; e-mail: *chewrl@state.gov.*

SUPPLEMENTARY INFORMATION: Individuals interested in CCAMLR should also see 15 CFR Chapter III—International Fishing and Related Activities, Part 300—International Fishing Regulations, Subpart A—General; Subpart B—High Seas Fisheries; and Subpart G—Antarctic Marine Living Resources, for other regulatory measures related to conservation and management in the CCAMLR Convention area. Subpart B notes the requirements for high seas fishing vessel licensing. Subparts A and G describe the process for regulating U.S. fishing in the CCAMLR Convention area and contain the text of CCAMLR Conservation Measures that are not expected to change from year to year. The regulations in Subparts A and G include sections on; Purpose and scope; Definitions; Relationship to other treaties, conventions, laws, and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific Research; Initiating a new fishery; Exploratory fisheries; Reporting and recordkeeping requirements; Vessel and gear identification; Gear disposal; Mesh Size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties.

Conservation Measures Remaining in Force: The Commission agreed that the Conservation Measures 2/III, 3/IV, 4/V, 5/V, 7/V, 6/V, 18/XIX, 19/IX, 40/X, 51/XIX, 61/XII, 62/XIX, 63/XV, 72/XVII, 73/XVII, 82/XIX, 95/XIV, 119/XX, 121/XIX, 122/XIX, 129/XVI, 146/XVII, 171/XVIII, 173/XVIII, 180/XVIII, 217/XX, and 160/XVII and Resolutions 7/IX, 10/XII, 14/XIX, 15/XIX, 16/XIX, and 17/XX remain in force in 2002/03.

For the text of CCAMLR Conservation Measures remaining in force, see 61 FR 66723, dated December 18, 1996; 63 FR 5587, dated February 3, 1998; 63 FR 300 dated December 22, 1998; 64 FR 71165, dated December 20, 1999; 66 FR 7527, dated January 23, 2001, and 67 FR 2477, dated January 17, 2002.

New and Revised Conservation Measures: At its Twenty-First Meeting in Hobart, Tasmania, October 21 to November 1, 2002, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) revised the following Conservation Measures 29/XIX, 31/X, 32/XIX, 45/XX, 64/XIX, 65/XII, 106/XIX, 118/XX, 147/XIX, 148/XX, 170/XX and 216/XX. In addition, twenty-one measures and two resolutions were adopted. The conservation measures and resolutions adopted at the Twenty-First Meeting follow. For further information, see the CCAMLR Web site at *http://www.ccamlr.org* under Publications for the Schedule of Conservation Measures in Force (2002/2003), or contact the Commission at the CCAMLR Secretariat, P.O. Box 213, North Hobart, Tasmania 7002, Australia, Tel: (61) 3–6231–0366, Fax: (61) 3–6234–9965.

Conservation Measure 10–03 (2002)[1] [147/XXI]

Port Inspections of Vessels Carrying Toothfish

1. Contracting Parties shall undertake inspection of all fishing vessels carrying *Dissostichus* spp. which enter their ports. The inspection shall be for the purpose of determining that if the vessel carried out harvesting activities in the Convention Area, these activities were carried out in accordance with CCAMLR conservation measures, and that if it intends to land or transhipment *Dissostichus* spp. the catch to be unloaded or transhipped is accompanied by a *Dissostichus* catch document required by Conservation Measure 10–05 [170/XXI], and that the catch agrees with the information recorded on the document.

2. To facilitate these inspections, Contracting Parties shall require vessels to provide advance notice of their entry into port and to convey a written declaration that they have not engaged in or supported illegal, unregulated and unreported (IUU) fishing in the Convention Area. The inspection shall be conducted within 48 hours of port entry and shall be carried out in an expeditious fashion. It shall impose no undue burdens on the vessel or its crew, and shall be guided by the relevant provisions of the CCAMLR System of Inspection. Vessels which either declare that they have been involved in IUU fishing or fail to make a declaration shall be denied port access, other than for emergency purposes.

3. In the event that there is evidence that the vessel has fished in contravention of CCAMLR conservation measures, the catch shall not be landed or transhipped. The Contracting Party will inform the Flag State of the vessel of its inspection findings and will cooperate with the Flag State in taking such appropriate action as is required to investigate the alleged infringement, and, if necessary, apply appropriate sanctions in accordance with national legislation.

4. Contracting Parties shall promptly provide the Secretariat with a report on the outcome of each inspection conducted under this conservation measure. In respect of any vessels denied port access or permission to land or transhipment *Dissostichus* spp., the Secretariat shall promptly convey such reports to all Contracting Parties.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

Conservation Measure 10–04 (2002) [148/XXI]

Automated Satellite-Linked Vessel Monitoring Systems (VMS)

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall maintain an automated Vessel Monitoring System (VMS) to monitor the position of its fishing vessels, which are licensed [1] in accordance with Conservation Measure 10–02 [119/XX].

2. The implementation of VMS on vessels while participating only in a krill fishery is not currently required.

3. Each Contracting Party, within two working days of receiving the required VMS information, shall provide to the Secretariat dates and the statistical area, subarea or division for each of the following movements of its flag fishing vessels:

(i) Entering and leaving the Convention Area; and

(ii) Crossing boundaries between CCAMLR statistical areas, subareas and divisions.

4. For the purpose of this measure, VMS means a system where, inter alia:

(i) Through the installation of satellite-tracking devices on board its fishing vessels, the Flag State receives automatic transmission of certain information. This information includes the fishing vessel identification, location, date and time, and is collected by the Flag State at least every four hours to enable it to monitor effectively its flag vessels;

(ii) Performance standards provide, as a minimum, that the VMS:

(a) For both the hardware and software components, shall be tamper proof, *i.e.* shall not permit the input or output of false positions and must not be capable of being manually over-ridden;

(b) Is fully automatic and operational at all times regardless of environmental conditions;

(c) Provides real time data;

(d) Provides the geographical position of the vessel, with a position error of less than 500 m with a confidence interval of 99%, the format being determined by the Flag State; and

(e) In addition to regular messages, provides special messages when the vessel enters or leaves the Convention Area and when it moves between one CCAMLR area, subarea or division within the Convention Area.

5. Contracting Parties shall not issue licences under Conservation Measure 10–02 [119/XX] unless the VMS complies with paragraph 5 in its entirety.

6. In the event of technical failure or other non-function of the VMS, the master or the owner of the fishing vessel, as a minimum:

(i) Shall communicate at least once every 24 hours, starting from the time that this event was detected, the data referred in paragraph 4(i) by telex, by fax, by telephone message or by radio to the Flag State; and

(ii) Shall take immediate steps to have the device repaired or replaced as soon as possible, and, in any event, within two months. If during that period the vessel returns to port it shall not be allowed to commence a further fishing trip without having the defective device repaired or replaced.

7. In the event that the VMS ceases to operate, the Contracting Party as soon as possible shall advise the Executive Secretary of the name of the vessel, the date, time and the location of the vessel when the VMS failed. The Party shall also inform the Executive Secretary when the VMS becomes operational again. The Executive Secretary shall make such information available to Contracting Parties upon request.

8. Contracting Parties shall report to the Secretariat before the start of annual meetings of the Commission, on the VMS which has been introduced in accordance with paragraphs 1 and 2, including its technical details, on:

(i) Any change in the VMS; and

(ii) In accordance with paragraph XI of the CCAMLR System of Inspection, all cases where they have determined, with the assistance of the VMS that vessels of their flag had fished in the Convention Area in possible contravention of CCAMLR conservation measures.

[1] Includes permitted.

Conservation Measure 10–05 (2002) [170/XXI]

Catch Documentation Scheme for Dissostichus spp.

The Commission,

Concerned that illegal, unregulated and unreported (IUU) fishing for *Dissostichus* spp. in the Convention Area threatens serious depletion of populations of *Dissostichus* spp.,

Aware that IUU fishing involves significant by-catch of some Antarctic species, including endangered albatross,

Noting that IUU fishing is inconsistent with the objective of the Convention and undermines the effectiveness of CCAMLR conservation measures,

Underlining the responsibilities of Flag States to ensure that their vessels conduct their fishing activities in a responsible manner,

Mindful of the rights and obligations of Port States to promote the effectiveness of regional fishery conservation measures,

Aware that IUU fishing reflects the high value of, and resulting expansion in markets for and international trade in, *Dissostichus* spp.,

Recalling that Contracting Parties have agreed to introduce classification codes for *Dissostichus* spp. at a national level,

Recognising that the implementation of a Catch Documentation Scheme for *Dissostichus* spp. will provide the Commission with essential information necessary to provide the precautionary management objectives of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures,

Wishing to reinforce the conservation measures already adopted by the Commission with respect to *Dissostichus* spp.,

Inviting non-Contracting Parties whose vessels fish for *Dissostichus* spp. to participate in the Catch Documentation Scheme for *Dissostichus* spp.,

hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall take steps to identify the origin of *Dissostichus* spp. imported into or exported from its territories and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into or exported from its territories was caught in a manner consistent with CCAMLR conservation measures.

2. Each Contracting Party shall require that each master or authorised representative of its flag vessels authorised to engage in harvesting of *Dissostichus eleginoides* and/or *Dissostichus mawsoni* complete a *Dissostichus* catch document for the catch landed or transhipped on each occasion that it lands or transhipps *Dissostichus* spp.

3. Each Contracting Party shall require that each landing of *Dissostichus* spp. at its ports and each transhipment of *Dissostichus* spp. to its vessels be accompanied by a completed *Dissostichus* catch document.

4. Each Contracting Party shall, in accordance with their laws and

regulations, require that their flag vessels which intend to harvest *Dissostichus* spp., including on the high seas outside the Convention Area, are provided with specific authorisation to do so. Each Contracting Party shall provide *Dissostichus* catch document forms to each of its flag vessels authorised to harvest *Dissostichus* spp. and only to those vessels.

5. A non-Contracting Party seeking to cooperate with CCAMLR by participating in this scheme may issue *Dissostichus* catch document forms, in accordance with the procedures specified in paragraphs 6 and 7, to any of its flag vessels that intend to harvest *Dissostichus* spp.

6. The *Dissostichus* catch document shall include the following information:

(i) The name, address, telephone and fax numbers of the issuing authority;

(ii) The name, home port, national registry number, and call sign of the vessel and, if issued, its IMO/Lloyd's registration number;

(iii) The reference number of the licence or permit, whichever is applicable, that is issued to the vessel;

(iv) The weight of each *Dissostichus* species landed or transhipped by product type, and

(a) By CCAMLR statistical subarea or division if caught in the Convention Area; and/or

(b) By FAO statistical area, subarea or division if caught outside the Convention Area;

(v) The dates within which the catch was taken;

(vi) The date and the port at which the catch was landed or the date and the vessel, its flag and national registry number, to which the catch was transhipped; and

(vii) The name, address, telephone and fax numbers of the recipient(s) of the catch and the amount of each species and product type received.

7. Procedures for completing *Dissostichus* catch documents in respect of vessels are set forth in paragraphs A1 to A10 of Annex 10–05/A [170/A] to this measure. The standard catch document is available on the CCAMLR Web site, *http://www.CCAMLR.org,* or contact the Office of Sustainable Fisheries at the National Marine Fisheries Service (phone Dean Swanson at 301–713–2276).

8. Each Contracting Party shall require that each shipment of *Dissostichus* spp. imported into or exported from its territory be accompanied by the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment.

9. An export-validated *Dissostichus* catch document issued in respect of a vessel is one that:

(i) Includes all relevant information and signatures provided in accordance with paragraphs A1 to A11 of Annex 10–05/A [170/A] to this measure; and

(ii) Includes a signed and stamped certification by a responsible official of the exporting State of the accuracy of the information contained in the document.

10. Each Contracting Party shall ensure that its customs authorities or other appropriate officials request and examine the documentation of each shipment of *Dissostichus* spp. imported into or exported from its territory to verify that it includes the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment. These officials may also examine the content of any shipment to verify the information contained in the catch document or documents.

11. If, as a result of an examination referred to in paragraph 10 above, a question arises regarding the information contained in a *Dissostichus* catch document or a re-export document the exporting State whose national authority validated the document(s) and, as appropriate, the Flag State whose vessel completed the document are called on to cooperate with the importing State with a view to resolving such question.

12. Each Contracting Party shall promptly provide by the most rapid electronic means copies to the CCAMLR Secretariat of all export-validated *Dissostichus* catch documents and, where relevant, validated re-export documents that it issued from and received into its territory and shall report annually to the Secretariat data, drawn from such documents, on the origin and amount of *Dissostichus* spp. exported from and imported into its territory.

13. Each Contracting Party, and any non-Contracting Party that issues *Dissostichus* catch documents in respect of its flag vessels in accordance with paragraph 5, shall inform the CCAMLR Secretariat of the national authority or authorities (including names, addresses, phone and fax numbers and email addresses) responsible for issuing and validating *Dissostichus* catch documents.

14. Notwithstanding the above, any Contracting Party, or any non-Contracting Party participating in the Catch Documentation Scheme, may require additional verification of catch documents by Flag States by using, *inter alia,* VMS, in respect of catches [1] taken on the high seas outside the Convention Area, when landed at, imported into or exported from its territory.

15. If a Contracting Party participating in the CDS has cause to sell or dispose of seized or confiscated *Dissostichus* spp., it may issue a Specially Validated *Dissostichus* Catch Document (SVDCD) specifying the reasons for that validation. The SVDCD shall include a statement describing the circumstances under which confiscated fish are moving in trade. To the extent practicable, Parties shall ensure that no financial benefit arising from the sale of seized or confiscated catch accrue to the perpetrators of IUU fishing. If a Contracting Party issues a SVDCD, it shall immediately report all such validations to the Secretariat for conveying to all Parties and, as appropriate, recording in trade statistics.

16. A Contracting Party may transfer all or part of the proceeds from the sale of seized or confiscated *Dissostichus* spp. into the CDS Fund created by the Commission or into a national fund which promotes achievement of the objectives of the Convention. A Contracting Party may, consistent with its domestic legislation, decline to provide a market for toothfish offered for sale with a SVDCD by another State. Provisions concerning the uses of the CDS Fund are found in Annex B.

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

Annex 10–05/A [170/A]

A1. Each Flag State shall ensure that each *Dissostichus* catch document form that it issues includes a specific identification number consisting of:

(i) A four-digit number, consisting of the two-digit International Standards Organization (ISO) country code plus the last two digits of the year for which the form is issued; and

(ii) A three-digit sequence number (beginning with 001) to denote the order in which catch document forms are issued.

It shall also enter on each *Dissostichus* catch document form the number as appropriate of the licence or permit issued to the vessel.

A2. The master of a vessel which has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures prior to each landing or transhipment of *Dissostichus* spp.:

(i) The master shall ensure that the information specified in paragraph 6 of

this conservation measure is accurately recorded on the *Dissostichus* catch document form;

(ii) If a landing or transhipment includes catch of both *Dissostichus* spp., the master shall record on the *Dissostichus* catch document form the total amount of the catch landed or transhipped by weight of each species;

(iii) If a landing or transhipment includes catch of *Dissostichus* spp. taken from different statistical subareas and/or divisions, the master shall record on the *Dissostichus* catch document form the amount of the catch by weight of each species taken from each statistical subarea and/or division and indicating whether the catch was caught in an EEZ or on the high seas, as appropriate; and

(iv) The master shall convey to the Flag State of the vessel by the most rapid electronic means available, the *Dissostichus* catch document number, the dates within which the catch was taken, the species, processing type or types, the estimated weight to be landed and the area or areas of the catch, the date of landing or transhipment and the port and country of landing or vessel of transhipment and shall request from the Flag State, a Flag State confirmation number.

A3. If, for catches [1] taken in the Convention Area or on the high seas outside the Convention Area, the Flag State verifies, by the use of a VMS (as described in paragraphs 5 and 6 of Conservation Measure 10–04 [148/XX]), the area fished and that the catch to be landed or transhipped as reported by its vessel is accurately recorded and taken in a manner consistent with its authorisation to fish, it shall convey a unique Flag State confirmation number to the vessel's master by the most rapid electronic means available. The *Dissostichus* catch document will receive a confirmation number from the Flag State, only when it is convinced that the information submitted by the vessel fully satisfies the provisions of this conservation measure.

A4. The master shall enter the Flag State confirmation number on the *Dissostichus* catch document form.

A5. The master of a vessel that has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures immediately after each landing or transhipment of *Dissostichus* spp.:

(i) In the case of a transhipment, the master shall confirm the transhipment by obtaining the signature on the *Dissostichus* catch document of the master of the vessel to which the catch is transferred;

(ii) In the case of a landing, the master or authorised representative shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official at the port of landing or free trade zone;

(iii) In the case of a landing, the master or authorised representative shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade zone; and

(iv) In the event that the catch is divided upon landing, the master or authorised representative shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A6. In respect of each landing or transhipment, the master or authorised representative shall immediately sign and convey by the most rapid electronic means available a copy, or, if the catch landed was divided, copies, of the signed *Dissostichus* catch document to the Flag State of the vessel and shall provide a copy of the relevant document to each recipient of the catch.

A7. The Flag State of the vessel shall immediately convey by the most rapid electronic means available a copy or, if the catch was divided, copies, of the signed *Dissostichus* catch document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A8. The master or authorised representative shall retain the original copies of the signed *Dissostichus* catch document(s) and return them to the Flag State no later than one month after the end of the fishing season.

A9.The master of a vessel to which catch has been transhipped (receiving vessel) shall adhere to the following procedures immediately after landing of such catch in order to complete each *Dissostichus* catch document received from transhipping vessels:

(i) The master of the receiving vessel shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official at the port of landing or free trade zone;

(ii) The master of the receiving vessel shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade zone; and

(iii) In the event that the catch is divided upon landing, the master of the receiving vessel shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A10. In respect of each landing of transhipped catch, the master or authorised representative of the receiving vessel shall immediately sign and convey by the most rapid electronic means available a copy of all the *Dissostichus* catch documents, or if the catch was divided, copies, of all the *Dissostichus* catch documents, to the Flag State(s) that issued the *Dissostichus* catch document, and shall provide a copy of the relevant document to each recipient of the catch. The Flag State of the receiving vessel shall immediately convey by the most rapid electronic means available a copy of the document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A11. For each shipment of *Dissostichus* spp. to be exported from the country of landing, the exporter shall adhere to the following procedures to obtain the necessary export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) The exporter shall enter on each *Dissostichus* catch document the amount of each *Dissostichus* spp. reported on the document that is contained in the shipment;

(ii) The exporter shall enter on each *Dissostichus* catch document the name and address of the importer of the shipment and the point of import;

(iii) The exporter shall enter on each *Dissostichus* catch document the exporter's name and address, and shall sign the document; and

(iv) The exporter shall obtain a signed and stamped validation of the *Dissostichus* catch document by a responsible official of the exporting State.

A12. In the case of re-export, the re-exporter shall adhere to the following procedures to obtain the necessary re-export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) The re-exporter shall supply details of the net weight of product of all species to be re-exported, together with the *Dissostichus* catch document number to which each species and product relates;

(ii) The re-exporter shall supply the name and address of the importer of the shipment, the point of import and the name and address of the exporter;

(iii) The re-exporter shall obtain a signed and stamped validation of the above details by the responsible official of the exporting State on the accuracy of information contained in the document(s); and

(iv) The responsible official of the exporting state shall immediately transmit by the most rapid electronic means a copy of the re-export document to the Secretariat to be made available next working day to all Contracting Parties.

The standard form for re-export is available on the CCAMLR Web site, *http://www.CCAMLR.org*, or contact the Office of Sustainable Fisheries at the National Marine Fisheries Service (phone Dean Swanson at 301–713–2276).

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

Annex 10–05/B [170/B]

The Use of the CDS Fund

B1. The purpose of the CDS Fund ('the Fund') is to enhance the capacity of the Commission in improving the effectiveness of the CDS and by this, and other means, to prevent, deter and eliminate IUU fishing in the Convention Area.

B2. The Fund will be operated according to the following provisions:

(i) The Fund shall be used for special projects, or special needs of the Secretariat if the Commission so decides, aimed at assisting the development and improving the effectiveness of the CDS. The Fund may also be used for special projects and other activities contributing to the prevention, deterrence and elimination of IUU fishing in the Convention Area, and for other such purposes as the Commission may decide.

(ii) The Fund shall be used primarily for projects conducted by the Secretariat, although the participation of Members in these projects is not precluded. While individual Member projects may be considered, this shall not replace the normal responsibilities of Members of the Commission. The Fund shall not be used for routine Secretariat activities.

(iii) Proposals for special projects may be made by Members, by the Commission or the Scientific Committee and their subsidiary bodies, or by the Secretariat. Proposals shall be made to the Commission in writing and be accompanied by an explanation of the proposal and an itemised statement of estimated expenditure.

(iv) The Commission will, at each annual meeting, designate six Members to serve on a Review Panel to review proposals made intersessionally and to make recommendations to the Commission on whether to fund special projects or special needs. The Review Panel will operate by email intersessionally and meet during the first week of the Commission's annual meeting.

(v) The Commission shall review all proposals and decide on appropriate projects and funding as a standing agenda item at its annual meeting.

(vi) The Fund may be used to assist Acceding States and non-Contracting Parties that wish to cooperate with CCAMLR and participate in the CDS, so long as this use is consistent with provisions (i) and (ii) above. Acceding States and non-Contracting Parties may submit proposals if the proposals are sponsored by, or in cooperation with, a Member.

(vii) The Financial Regulations of the Commission shall apply to the Fund, except in so far as these provisions provide or the Commission decides otherwise.

(viii) The Secretariat shall report to the annual meeting of the Commission on the activities of the Fund, including its income and expenditure. Annexed to the report shall be reports on the progress of each project being funded by the Fund, including details of the expenditure on each project. The report will be circulated to Members in advance of the annual meeting.

(ix) Where an individual Member project is being funded according to provision (ii), that Member shall provide an annual report on the progress of the project, including details of the expenditure on the project. The report shall be submitted to the Secretariat in sufficient time to be circulated to Members in advance of the annual meeting. When the project is completed, that Member shall provide a final statement of account certified by an auditor acceptable to the Commission.

(x) The Commission shall review all ongoing projects at its annual meeting as a standing agenda item and reserves the right, after notice, to cancel a project at any time should it decide that it is necessary. Such a decision shall be exceptional, and shall take into account progress made to date and likely progress in the future, and shall in any case be preceded by an invitation from the Commission to the project coordinator to present a case for continuation of funding.

(xi) The Commission may modify these provisions at any time.

Conservation Measure 10–06 (2002) [S01/XXI]

Scheme To Promote Compliance by Contracting Party Vessels With CCAMLR Conservation Measures

The Commission,

Convinced that illegal, unregulated and unreported (IUU) fishing compromises the primary objectives of the Convention,

Aware that a significant number of vessels registered to Parties and non-Parties are engaged in fishing operations in the Convention Area in a manner which diminishes the effectiveness of CCAMLR conservation measures,

Recalling that Parties are required to cooperate in taking appropriate action to deter any fishing activities which are not consistent with the objective of the Convention,

Resolved to reinforce its integrated administrative and political measures aimed at eliminating IUU fishing in the Convention Area,

hereby adopts the following conservation measure in accordance with Article IX.2(i) of the Convention:

1. At each annual meeting, the Commission will identify those Contracting Parties whose vessels have engaged in fishing activities in the Convention Area in a manner which has diminished the effectiveness of CCAMLR conservation measures in force, and shall establish a list of such vessels (IUU Vessel List), in accordance with the procedures and criteria set out hereafter.

2. This identification shall be documented, *inter alia*, on reports relating to the application of Conservation Measure 10–03 [147/XXI], trade information obtained on the basis of the implementation of Conservation Measure 10–05 [170/XXI] and relevant trade statistics such as FAO and other national or international verifiable statistics, as well as any other information obtained from Port States and/or gathered from the fishing grounds which is suitably documented.

3. For the purposes of this conservation measure, the Contracting Parties are considered as having carried out fishing activities that have diminished the effectiveness of the conservation measures adopted by the Commission if:

(a) The Parties do not ensure compliance by their vessels with the conservation measures adopted by the Commission and in force, in respect of the fisheries in which they participate that are placed under the competence of CCAMLR; and

(b) Their vessels are repeatedly included in the CCAMLR List of

Contracting Party vessels identified as carrying out IUU fishing activities in accordance with the criteria and procedures established in this conservation measure.

4. In order to establish the IUU Vessel List, evidence, gathered in accordance with paragraph 2, shall be required that fishing vessels flying the flag of the Contracting Party concerned have:

(a) Engaged in fishing activities in the CCAMLR Convention Area without a licence issued in accordance with Conservation Measure 10–02 [119/XX], or in violation of the conditions under which such licence would have been issued in relation to authorised areas, species and time periods; or

(b) Did not record or did not declare their catches made in the CCAMLR Convention Area in accordance with the reporting system applicable to the fisheries they engaged in, or made false declarations; or

(c) Fished during closed fishing periods or in closed areas in contravention of CCAMLR conservation measures; or

(d) Used prohibited gear in contravention of applicable CCAMLR conservation measures; or

(e) Transhipped or participated in joint fishing operations with other vessels identified by CCAMLR as carrying out IUU fishing activities (i.e. on the IUU Vessel List or in Conservation Measure 10–07 [118/XXI]); or

(f) Engaged in fishing activities in a manner that undermines the attainment of the objectives of the Convention in waters adjacent to islands within the area to which the Convention applies over which the existence of State sovereignty is recognised by all Contracting Parties, in the terms of the statement made by the Chairman on 19 May 1980; or

(g) Engaged in fishing activities contrary to any other CCAMLR conservation measures in a manner that undermines the attainment of the objectives of the Convention according to Article XXII of the Convention.

5. The Executive Secretary shall, before 30 April of each year, draw up a draft list of Contracting Party vessels that, on the basis of the information gathered in accordance with paragraph 2, the criteria defined in paragraph 4, and any other information that the Secretariat might have obtained in relation thereto, might be presumed to have carried out IUU fishing activities in the CCAMLR Convention area during the previous season. The List shall be distributed immediately to the Contracting Parties concerned.

6. Contracting Parties whose vessels are included in the draft list established by the Secretariat will transmit before 30 June to CCAMLR, their comments, as appropriate, including verifiable VMS data and other supporting information showing that the vessels listed have neither engaged in fishing activities in contravention of CCAMLR conservation and management measures nor had the possibility of being engaged in fishing activities in the Convention Area.

7. On the basis of the information received pursuant to paragraph 6, the Executive Secretary shall distribute the draft list and all comments received as a Provisional IUU Vessel List, which shall be transmitted before 31 July to all Contracting Parties together with all the comments and supporting information provided.

8. Contracting Parties may at any time submit to the Executive Secretary any additional information, which might be relevant for the establishment of the IUU Vessel List. The Executive Secretary shall circulate the information at the latest 30 days before the annual meeting to all Contracting Parties together with all the evidence provided.

9. The Standing Committee on Inspection and Compliance (SCIC) shall examine, each year, the Provisional IUU Vessel List as well as the comments and information received, and any further information provided during its annual deliberations which may be considered relevant to this review.

10. SCIC shall recommend that the Commission should remove vessels from the Provisional IUU Vessel List if the Contracting Party proves that:

(a) The vessel did not take part in IUU fishing activities described in paragraph 1; or

(b) It has taken effective action in response to the IUU fishing activities in question, including prosecution and imposition of sanctions of adequate severity; or

(c) The vessel has changed ownership and that the new owner can establish the previous owner no longer has any legal, financial, or real interests in the vessel, or exercises control over it and that the new owner has not participated in IUU fishing; or

(d) The Contracting Party has taken measures considered sufficient to ensure the granting of the right to the vessel to fly its flag will not result in IUU fishing.

11. Following the examination referred to in paragraph 9, SCIC shall submit to the Commission for approval, a proposed IUU Vessel List.

12. On approval of the IUU Vessel List, the Commission shall request Contracting Parties whose vessels appear thereon to take all necessary measures to address these IUU fishing activities, including if necessary, the withdrawal of the registration or of the fishing licences of these vessels, the nullification of the relevant catch documents and denial of further access to the CDS, and to inform the Commission of the measures taken in this respect.

13. The Executive Secretary, SCIC and the Commission shall undertake the procedures established in paragraphs 5 to 12 each year in respect of adding or removing vessels from the IUU Vessel List.

14. Contacting Parties shall take all necessary measures, to the extent possible in accordance with their applicable legislation, in order that:

(a) The issuance of a licence to vessels appearing in the IUU Vessel List to fish in the Convention Area is prohibited;

(b) The issuance of a licence to vessels included in the IUU Vessel List to fish in waters under their fisheries jurisdiction is prohibited;

(c) Fishing vessels, support vessels, mother-ships and cargo vessels flying their flag do not participate in any transhipment or joint fishing operations with vessels registered on the IUU Vessel List;

(d) Vessels appearing in the IUU Vessel List that enter ports voluntarily are not authorised to land or tranship therein and are inspected in accordance with Conservation Measure 10–03 [147/XXI] on so entering;

(e) The chartering of vessels included in the IUU Vessel List is prohibited;

(f) Granting of their flag to vessels appearing in the IUU Vessel List is refused;

(g) Imports of *Dissostichus* spp. from vessels included in the IUU Vessel List are prohibited;

(h) ''Export or Re-export Government Authority Validation'' is not verified when the shipment (of *Dissostichus* spp.) is declared to have been caught by any vessel included in the IUU Vessel List;

(i) Importers, transporters and other sectors concerned, are encouraged to refrain from negotiating and from transhipping of fish caught by vessels appearing in the IUU Vessel List; and

(j) Any appropriate information which is suitably documented is collected and exchanged with other Contracting Parties or cooperating non-Contracting Parties, entities or fishing entities with the aim of detecting, controlling and preventing the use of false import/export certificates regarding fish from vessels appearing in the IUU Vessel List.

15. The Executive Secretary shall place the IUU Vessel List approved by

the Commission on a secure section of the CCAMLR website.

16. Without prejudice to the rights of Flag States and Coastal States to take proper action consistent with international law, Contracting Parties should not take any trade measures or other sanctions which are inconsistent with their international obligations against vessels using as the basis for the action the fact that the vessel or vessels have been included in the draft list drawn up by the Secretariat, pursuant to paragraph 5.

17. The Chair of the Commission shall request the Contracting Parties identified pursuant to paragraph 1 to take all necessary measures to avoid diminishing the effectiveness of the CCAMLR conservation measures resulting from their vessels' activities, and to advise the Commission of actions taken in that regard.

18. The Commission shall review, at subsequent annual meetings, as appropriate, action taken by those Contracting Parties to which requests have been made pursuant to paragraph 17, and identify those which have not rectified their fishing activities.

19. The Commission shall decide appropriate measures to be taken in respect to *Dissostichus* spp. so as to address these issues with those identified Contracting Parties. In this respect, Contracting Parties may cooperate to adopt appropriate multilaterally agreed trade-related measures, consistent with the World Trade Organization (WTO), that may be necessary to prevent, deter and eliminate the IUU fishing activities identified by the Commission. Multilateral trade-related measures may be used to support cooperative efforts to ensure that trade in *Dissostichus* spp. and its products does not in any way encourage IUU fishing or otherwise undermine the effectiveness of CCAMLR's conservation measures which are consistent with the United Nations Convention on the Law of the Sea 1982.

Conservation Measure 10–07 (2002) [118/XXI]

Scheme To Promote Compliance by Non-Contracting Party Vessels With CCAMLR Conservation Measures

1. The Contracting Parties request non-Contracting Parties to cooperate fully with the Commission with a view to ensuring that the effectiveness of CCAMLR conservation measures is not undermined.

2. At each annual meeting the Commission shall identify those non-Contracting Parties whose vessels are engaged in illegal, unregulated and unreported (IUU) fishing activities in the Convention Area that threaten to undermine the effectiveness of CCAMLR conservation measures, and shall establish a list of such vessels (IUU Vessel List), in accordance with the procedures and criteria set out hereafter.

3. A non-Contracting Party vessel which has been sighted engaging in fishing activities in the Convention Area or which has been denied port access, landing or transhipment in accordance with Conservation Measure 10–03 [147/XXI] is presumed to be undermining the effectiveness of CCAMLR conservation measures. In the case of any transhipment activities involving a sighted non-Contracting Party vessel inside or outside the Convention Area, the presumption of undermining the effectiveness of CCAMLR conservation measures applies to any other non-Contracting Party vessel which has engaged in such activities with that vessel.

4. When the non-Contracting Party vessel referred to in paragraph 2 enters a port of any Contracting Party, it shall be inspected by authorised Contracting Party officials in accordance with Conservation Measure 10–03 [147/XXI] and shall not be allowed to land or tranship any fish species subject to CCAMLR conservation measures it might be holding on board unless the vessel establishes that the fish were caught in compliance with all relevant CCAMLR conservation measures and requirements under the Convention.

5. The Contracting Party which sights the non-Contracting Party vessel or denies it port access, landing or transhipment under paragraph 2 shall attempt to inform the vessel it is presumed to be undermining the objective of the Convention and that this information will be distributed to all Contracting Parties and to the Secretariat, and to the Flag State of the vessel.

6. Information regarding such sightings or denial of port access, landings or transhipments, and the results of all inspections conducted in the ports of Contracting Parties, and any subsequent action shall be transmitted immediately to the Commission in accordance with Article XXII of the Convention. The Secretariat shall transmit this information to all Contracting Parties, within one business day of receiving this information, and to the Flag State of the sighted vessel as soon as possible. At this time, the Secretariat shall, in consultation with the Chair of the Commission, request the Flag State concerned that, where appropriate, measures be taken in accordance with its applicable laws and regulations to ensure that the vessel or vessels in question desist from any activities that undermine the effectiveness of CCAMLR conservation measures, and that the Flag State report back to CCAMLR on the results of such enquiries and/or on the measures it has taken in respect of the vessel or vessels concerned.

7. Contracting Parties may at any time submit to the Executive Secretary any additional information, which might be relevant for the identification of non-Contracting Party vessels that might be carrying out IUU fishing activities in the Convention Area.

8. The Standing Committee on Inspection and Compliance (SCIC) shall review the information received pursuant to paragraphs 3, 4 and 5, and any other information provided during its annual deliberations which may be considered relevant to this review.

9. Following the review referred to in paragraph 6, SCIC shall submit to the Commission for approval, a proposed IUU Vessel List.

10. The Executive Secretary, SCIC and the Commission shall undertake each year the procedures set out in this conservation measure in respect of adding or removing vessels from the IUU Vessel List. In this regard, SCIC shall recommend that the Commission removes vessels from the list approved in a previous annual meeting if the relevant Flag State satisfies the Commission that:

(a) The vessel did not take part in IUU fishing activities described in paragraph 1; or

(b) It has taken effective action in response to the IUU fishing activities in question, including prosecution and imposition of sanctions of adequate severity; or

(c) The vessel has changed ownership and that the new owner can establish the previous owner no longer has any legal, financial, or real interests in the vessel, or exercises control over it and that the new owner has not participated in IUU fishing; or

(d) The Flag State has taken measures considered sufficient to ensure the granting of the right to the vessel to fly its flag will not result in IUU fishing.

11. Contracting Parties shall take all necessary measures, to the extent possible in accordance with their applicable legislation, in order that:

(a) The issuance of a licence to vessels included in the IUU Vessel List to fish in waters under their fisheries jurisdiction is prohibited;

(b) Fishing vessels, support vessels, mother-ships and cargo vessels flying their flag do not participate in any

transhipment or joint fishing operations with vessels registered in the IUU Vessel List;

(c) Vessels appearing in the IUU Vessel List that enter ports are not authorised to land or tranship therein and are inspected in accordance with Conservation Measure 10–03 [147/XXI] on so entering;

(d) The chartering of vessels included in the IUU Vessel List is prohibited;

(e) Granting of their flag to vessels appearing in the IUU Vessel List is refused;

(f) Imports of *Dissostichus* spp. from vessels included in the IUU Vessel List are prohibited;

(g) ''Export or Re-export Government Authority Validation'' is not verified when the shipment (of *Dissostichus* spp.) is declared to have been caught by any vessel included in the IUU Vessel List;

(h) Importers, transporters and other sectors concerned, are encouraged to refrain from negotiating and from transhipping of fish caught by vessels appearing in the IUU Vessel List; and

(i) Any appropriate information is collected and exchanged with other Contracting Parties or cooperating non-Contracting Parties, entities or fishing entities with the aim of detecting, controlling and preventing the use of false import/export certificates regarding fish from vessels appearing in the IUU Vessel List.

12. The Executive Secretary shall place the IUU Vessel List on a secure section of the CCAMLR website.

13. The Commission shall request those non-Contracting Parties identified pursuant to paragraph 1, to immediately take steps to address the IUU fishing activities of the vessels flying their flag that have been included in the IUU Vessel List, including if necessary, the withdrawal of the registration or of the fishing licences of these vessels, the nullification of the relevant catch documents and denial of further access to the Catch Documentation Scheme for *Dissostichus* spp. (CDS), and to inform the Commission of the measures taken in this respect.

14. Contracting Parties shall jointly and/or individually request non-Contracting Parties identified pursuant to paragraph 1, to cooperate fully with the Commission in order to avoid undermining the effectiveness of conservation measures adopted by the Commission.

15. The Commission shall review, at subsequent annual meetings as appropriate, actions taken by those non-Contracting Parties identified pursuant to paragraph 1 to which requests have been made pursuant to paragraphs 13 and 14, and identify those which have not rectified their fishing activities.

16. The Commission shall decide appropriate measures to be taken in respect to *Dissostichus* spp. so as to address these issues with those identified non-Contracting Parties. In this respect, non-Contracting Parties may cooperate to adopt appropriate multilaterally agreed trade-related measures, consistent with the World Trade Organization (WTO), that may be necessary to prevent, deter and eliminate the IUU fishing activities identified by the Commission. Multilateral trade-related measures may be used to support cooperative efforts to ensure that trade in *Dissostichus* spp. and its products does not in any way encourage IUU fishing or otherwise undermine the effectiveness of CCAMLR's conservation measures which are consistent with the United Nations Convention on the Law of the Sea 1982.

Conservation Measure 21–01 (2002) [1, 2] [31/XXI]

Notification That Members Are Considering Initiating a New Fishery

The Commission,

Recognising that in the past, Antarctic fisheries have been initiated in the Convention Area before sufficient information was available upon which to base management advice,

Noting that in recent years new fisheries have started without adequate information being available to evaluate either the fishery potential or the possible impacts on the target stocks or species dependent on them,

Believing that without prior notification of a new fishery, the Commission is unable to fulfil its function under Article IX,

hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. A new fishery, for the purposes of this conservation measure, is a fishery on a species using a particular fishing method in a statistical subarea for which:

(i) Information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing have not been submitted to CCAMLR; or

(ii) Catch and effort data have never been submitted to CCAMLR; or

(iii) Catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

2. A Member intending to develop a new fishery shall notify the Commission not less than three months in advance of the next regular meeting of the Commission, where the matter shall be considered. The Member shall not initiate a new fishery pending the process specified in paragraphs 5 and 6 below.

3. The notification shall be accompanied by as much of the following information as the Member is able to provide:

(i) The nature of the proposed fishery including target species, methods of fishing, proposed region and any minimum level of catches that would be required to develop a viable fishery;

(ii) Biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity;

(iii) Details of dependent and associated species and the likelihood of them being affected by the proposed fishery; and

(iv) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the valuation of potential yield.

4. New fisheries shall be open only to those vessels that are equipped and configured so that they can comply with all relevant conservation measures. A vessel with a confirmed involvement in illegal, unregulated or unreported fishing in respect of Conservation Measures 10–06 and 10–07 [S01/XXI and 118/XXI] shall not be permitted to participate in new fisheries.

5. The information provided in accordance with paragraph 3, together with any other relevant information, shall be considered by the Scientific Committee, which shall then advise the Commission.

6. After its review of the information on the proposed new fishery, taking full account of the recommendations and the advice of the Scientific Committee, the Commission may then take such action as it deems necessary.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 21–02 (2002) [1, 2] [65/XXI]

Exploratory Fisheries

The Commission,

Recognising that in the past, some Antarctic fisheries had been initiated and subsequently expanded in the Convention Area before sufficient information was available upon which to base management advice, and

Agreeing that exploratory fishing should not be allowed to expand faster than the acquisition of information

necessary to ensure that the fishery can and will be conducted in accordance with the principles set forth in Article II,

hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. For the purposes of this conservation measure, exploratory fisheries are defined as follows:

(i) An exploratory fishery shall be defined as a fishery that was previously classified as a ''new fishery'', as defined by Conservation Measure 21–01 [31/XXI];

(ii) An exploratory fishery shall continue to be classified as such until sufficient information is available:

(a) To evaluate the distribution, abundance, and demography of the target species, leading to an estimate of the fishery's potential yield;

(b) To review the fishery's potential impacts on dependent and related species; and

(c) To allow the Scientific Committee to formulate and provide advice to the Commission on appropriate harvest catch levels, as well as effort levels and fishing gear, where appropriate.

2. To ensure that adequate information is made available to the Scientific Committee for evaluation, during the period when a fishery is classified as exploratory:

(i) The Scientific Committee shall develop (and update annually as appropriate) a Data Collection Plan, which will identify the data needed and describe the actions necessary to obtain the relevant data from the exploratory fishery;

(ii) Each Member active in the fishery shall annually (by the specified date) submit to CCAMLR the data specified by the Data Collection Plan developed by the Scientific Committee;

(iii) Each Member active in the fishery or intending to authorise a vessel to enter the fishery shall annually prepare and submit to CCAMLR by a specified date a Research and Fishery Operations Plan for review by the Scientific Committee and the Commission;

(iv) Prior to any Member authorising its vessels to enter an exploratory fishery that is already in progress, that Member shall notify the Commission not less than three months in advance of the next regular meeting of the Commission, and the Member shall not enter the exploratory fishery until the conclusion of that meeting;

(v) If the data specified in the Data Collection Plan have not been submitted to CCAMLR for the most recent season in which fishing occurred, continued exploratory fishing by the Member which failed to report its data shall be prohibited until the relevant data have been submitted to CCAMLR and the Scientific Committee has been allowed an opportunity to review the data;

(vi) Fishing capacity and effort shall be limited by a precautionary catch limit at a level not substantially above that necessary to obtain the information specified in the Data Collection Plan and required to make the evaluations outlined in paragraph 1(ii);

(vii) The name, type, size, registration number, and radio call sign of each vessel participating in the exploratory fishery shall be registered with the CCAMLR Secretariat at least three months in advance of starting fishing each season; and

(viii) Each vessel participating in the exploratory fishery shall carry a scientific observer to ensure that data are collected in accordance with the agreed Data Collection Plan, and to assist in collecting biological and other relevant data.

3. The Data Collection Plan to be formulated and updated by the Scientific Committee shall include, where appropriate:

(i) A description of the catch, effort, and related biological, ecological, and environmental data required to undertake the evaluations described in paragraph 1(ii), and the date by which such data are to be reported annually to CCAMLR;

(ii) A plan for directing fishing effort during the exploratory phase to permit the acquisition of relevant data to evaluate the fishery potential and the ecological relationships among harvested, dependent, and related populations and the likelihood of adverse impacts; and

(iii) An evaluation of the time-scales involved in determining the responses of harvested, dependent and related populations to fishing activities.

4. Research and Fisheries Operations Plans to be prepared by Members participating or intending to participate in the exploratory fishery shall include as much of the following information as the Member is able to provide:

(i) A description of how the Member's activities will comply with the Data Collection Plan developed by the Scientific Committee;

(ii) The nature of the exploratory fishery, including target species, methods of fishing, proposed region and maximum catch levels proposed for the forthcoming season;

(iii) Biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data, and information on stock identity;

(iv) Details of dependent and related species and the likelihood of them being affected by the proposed fishery; and

(v) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of potential yield.

5. Exploratory fisheries shall be open only to those vessels that are equipped and configured so that they can comply with all relevant conservation measures. A vessel with a confirmed involvement in illegal, unregulated or unreported fishing in respect of Conservation Measures 10–06 and 10–07 [S01/XXI and 118/XXI] shall not be permitted to participate in exploratory fisheries.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 23–06 (2002) [F21/XXI]

Data Reporting System for Krill Fisheries

1. This conservation measure is invoked by the conservation measures to which it is attached.

2. Catches shall be reported to the Commission on a monthly basis.

3. At the end of each fishing season each Contracting Party shall obtain from each of its vessels the data required to complete the CCAMLR fine-scale catch and effort data form (trawl fisheries Form C1). It shall aggregate these data by 10×10 n mile rectangle and 10-day period, and transmit those data in the specified format to the Executive Secretary not later than 1 April of the following year.

4. For the purposes of the fine-scale data the calendar month shall be divided into three 10-day reporting periods, viz: day 1 to day 10, day 11 day 20, day 21 to the last day of the month. These 10-day reporting periods are hereinafter referred to as periods A, B and C.

Conservation Measure 24–01 (2002) [1, 2] [64/XXI]

The Application of Conservation Measures to Scientific Research

This conservation measure governs the application of conservation measures to scientific research and is adopted in accordance with Article IX of the Convention.

1. General application:

(a) Catches taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

(b) The CCAMLR within-season catch and effort reporting systems shall apply whenever the catch within a specified reporting period exceeds five tonnes, unless more specific regulations apply to the particular species.

2. Application to vessels taking less than 50 tonnes of finfish including no more than the amounts specified for finfish taxa in Annex 24–01/B [64/B] and less than 0.1% of a given catch limit for non-finfish taxa indicated in Annex 24–01/B [64/B]:

(a) Any Member planning to use a vessel for research purposes when the estimated catch is as above shall notify the Secretariat of the Commission which in turn will notify all Members immediately. This notification shall be included in the Members' Activities Reports.

(b) Vessels to which the provisions of paragraph 2(a) above apply, shall be exempt from conservation measures relating to mesh size regulations, prohibition of types of gear, closed areas, fishing seasons and size limits, and reporting system requirements other than those specified in paragraphs 1(a) and (b) above.

3. Application to vessels taking more than 50 tonnes of finfish or more than the amounts specified for finfish taxa in Annex 24–01/B [64/B] or more than 0.1% of a given catch limit for non-finfish taxa indicated in Annex 24–01/B [64/B]:

(a) Any Member planning to use any type of vessel to conduct fishing for research purposes when the estimated catch is as above, shall notify the Commission and provide the opportunity for other Members to review and comment on its research plan. The plan shall be provided to the Secretariat for distribution to Members at least six months in advance of the planned starting date for the research. In the event of any request for a review of such plan being lodged within two months of its circulation, the Executive Secretary shall notify all Members and submit the plan to the Scientific Committee for review. Based on the submitted research plan and any advice provided by the appropriate working group, the Scientific Committee will provide advice to the Commission where the review process will be concluded. Until the review process is complete the planned fishing for research purposes shall not proceed.

(b) Research plans shall be reported in accordance with the standardised guidelines and formats adopted by the Scientific Committee, available on the CCAMLR Web site at *http://www.ccamlr.org* or from the Southwest Fisheries Science Center of the National Marine Fisheries Service (call (858) 546–5600).

(c) A summary of the results of any research subject to these provisions shall be provided to the Secretariat within 180 days of the completion of the research fishing. A full report shall be provided within 12 months.

(d) Catch and effort data resulting from research fishing in accordance with paragraph (a) above, should be reported to the Secretariat according to the haul-by-haul reporting format for research vessels (C4).

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Annex 24–01/B [64/B]

Taxa-Specific Schedule for Notification of Research Vessel Activity

Taxon	Expected catch
(a) Thresholds for finfish taxa: *Dissostichus* spp.	10 tonnes.
(b) Non-finfish taxa for which a catch threshold of 0.1% of the catch limit for a given area would apply: Krill, Squid, Crabs.	

Conservation Measure 24–02 (2002) [216/XXI]

Experimental Line-Weighting Trials

In respect of fisheries in Statistical Subareas 48.6 south of 60°S, 88.1 and 88.2 and Division 58.4.2, paragraph 3 of Conservation Measure 25–02 [29/XXI] shall not apply only where a vessel can demonstrate prior to licensing for this fishery its ability to fully comply with either of the following experimental protocols.

Protocol A

A1. The vessel shall, under observation by a scientific observer:

(i) Set a minimum of five longlines with a minimum of four Time Depth Recorders (TDR) on each line;

(ii) Randomise TDR placement on the longline within and between sets;

(iii) Calculate an individual sink rate for each TDR when returned to the vessel, where:

(a) The sink rate shall be measured as an average of the time taken to sink from the surface
(0m) to 15 m; and

(b) This sink rate shall be at a minimum rate of 0.3 m/s;

(iv) If the minimum sink rate is not achieved at all 20 sample points, repeat the test until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded; and

(v) All equipment and fishing gear used in the tests is to be the same as that to be used in the Convention Area.

A2. During fishing, for a vessel to maintain the exemption to night-time setting requirements, continuous line sink monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) Aim to place a TDR on every longline set during the observer's shift;

(ii) Every seven days place all available TDRs on a single longline to determine any sink rate variation along the line;

(iii) Randomise TDR placement on the longline within and between sets;

(iv) Calculate an individual rate for each TDR when returned to the vessel; and

(v) Measure the sink rate as an average of the time taken to sink from the surface (0 m) to 15 m.

A3. The vessel shall:

(i) Ensure the average sink rate is at a minimum of 0.3 m/s;

(ii) Report daily to the fishery manager; and

(iii) Ensure that data collected from line sink trials is recorded in the approved format and submitted to the fishery manager at the conclusion of the season.

Protocol B

B1. The vessel shall, under observation by a scientific observer:

(i) Set a minimum of five longlines of the maximum length to be used in the Convention Area with a minimum of four bottle tests (see paragraphs B5 to B9) on the middle one-third of the longline;

(ii) Randomise bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iii) Calculate an individual sink rate for each bottle test, where the sink rate shall be measured as the time taken for the longline to sink from the surface (0 m) to 10 m;

(iv) This sink rate shall be at a minimum rate of 0.3 m/s;

(v) If the minimum sink rate is not achieved at all 20 sample points (four tests on five lines), continue testing until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded; and

(vi) All equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

B2. During fishing, for a vessel to maintain the exemption to paragraph 3 of Conservation Measure 25–02 [29/XXI], regular line sink rate monitoring

shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) Aim to conduct a bottle test on every longline set during the observer's shift, noting that the test should be undertaken on the middle one-third of the line;

(ii) Every seven days place at least four bottle tests on a single longline to determine any sink rate variation along the line;

(iii) Randomise bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iv) Calculate an individual sink rate for each bottle test; and

(v) Measure the line sink rate as the time taken for the line to sink from the surface (0 m) to 10 m.

B3. The vessel shall whilst operating under this exemption:

(i) Ensure that all longlines are weighted to achieve a minimum line sink rate of 0.3 m/s at all times;

(ii) Report daily to its national agency on the achievement of this target; and

(iii) Ensure that data collected from line sink rate monitoring are recorded in the approved format and submitted to the relevant national agency at the conclusion of the season.

B4. A bottle test is to be conducted as described below.

Bottle Set Up

B5. 10 m of 2 mm multifilament nylon snood twine, or equivalent, is securely attached to the neck of a 750 ml plastic bottle [1] (buoyancy about 0.7 kg) with a longline clip attached to the other end. The length measurement is taken from the attachment point (terminal end of the clip) to the neck of the bottle, and should be checked by the observer every few days.

B6. Reflective tape should be wrapped around the bottle to allow it to be observed at night. A piece of waterproof paper with a unique identifying number large enough to be read from a few metres away should be placed inside the bottle.

Test

B7. The bottle is emptied of water, the stopper is left open and the twine is wrapped around the body of the bottle for setting. The bottle with the encircled twine is attached to the longline [2], midway between weights (the attachment point).

B8. The observer records the time at which the attachment point enters the water as t_1 in seconds. The time at which the bottle is observed to be pulled completely under is recorded as t_2 in seconds [3]. The result of the test is calculated as follows:

Line sink rate = 10 / (t_2—t_1)

B9. The result should be equal to or greater than 0.3 m/s. These data are to be recorded in the space provided in the electronic observer logbook.

[1] A plastic water bottle that has a hard plastic screw-on 'stopper' is needed. The stopper of the bottle is left open so that the bottle will fill with water after being pulled under water. This allows the plastic bottle to be re-used rather than being crushed by water pressure. [2] On autolines attach to the backbone; on the Spanish longline system attach to the hookline. [3] Binoculars will make this process easier to view, especially in foul weather.

Conservation Measure 25–02 (2002) [1,2] [29/XXI]

Minimisation of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimising their attraction to fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Adopts the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water. Only thawed bait shall be used.

2. For vessels using the Spanish method of longline fishing, weights should be released before line tension occurs; weights of at least 8.5 kg mass shall be used, spaced at intervals of no more than 40 m, or 6 kg mass shall be used, spaced at intervals of no more than 20 m.

3. Longlines shall be set at night only (i.e. during the hours of darkness between the times of nautical twilight [3])[4]. During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

4. The dumping of offal is prohibited while longlines are being set. The dumping of offal during the haul shall be avoided. Any such discharge shall take place only on the opposite side of the vessel to that where longlines are hauled. For vessels or fisheries where there is not a requirement to retain offal on board the vessel, fish hooks should be removed from offal and fish heads prior to discharge.

5. Vessels which are so configured that they lack on-board processing facilities or adequate capacity to retain offal on board, or the ability to discharge offal on the opposite side of the vessel to that where longlines are hauled, shall not be authorised to fish in the Convention Area.

6. A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed. Specification of the streamer line and its method of deployment is given in the appendix to this measure. Details of the construction relating to the number and placement of swivels may be varied so long as the effective sea surface covered by the streamers is no less than that covered by the currently specified design. Details of the device dragged in the water in order to create tension in the line may also be varied.

7. Other variations in the design of streamer lines may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, providing that all other elements of this conservation measure are complied with [5].

8. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardising the life of the bird concerned.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands. [2] Except for waters adjacent to the Prince Edward Islands. [3] The exact times of nautical twilight are set forth in the Nautical Almanac tables for the relevant latitude, local time and date. All times, whether for ship operations or observer reporting, shall be referenced to GMT. [4] Wherever possible, setting of lines should be completed at least three hours before sunrise (to reduce loss of bait to/catches of white-chinned petrels). [5] The streamer lines under test should be constructed and operated taking full account of the principles set out in WG–IMALF–94/19 (available from the CCAMLR Secretariat); testing should be carried out independently of actual commercial fishing and in a manner consistent with the spirit of Conservation Measure 21–02 [65/XXI].

Appendix to Conservation Measure 25–02 [29/XXI]

1. The streamer line is to be suspended at the stern from a point approximately 4.5 m above the water and such that the line is directly above the point where the baits hit the water.

2. The streamer line is to be approximately 3 mm diameter, have a minimum length of 150 m and have a device at the end to create tension so that the main line streams directly behind the ship even in cross winds.

3. At 5 m intervals commencing from the point of attachment to the ship five branch streamers each comprising two strands of approximately 3 mm diameter cord should be

attached. The length of the streamer should range between approximately 3.5 m nearest the ship to approximately 1.25 m for the fifth streamer. When the streamer line is deployed the branch streamers should reach the sea surface and periodically dip into it as the ship heaves. Swivels should be placed in the streamer line at the towing point, before and after the point of attachment of each branch streamer and immediately before any weight placed on the end of the streamer line. Each branch streamer should also have a swivel at its attachment to the streamer line.

Conservation Measure 32–09 (2002) [1] [F01/XXI]

Prohibition of Directed Fishing for Dissostichus spp. Except in Accordance With Specific Conservation Measures in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

Directed fishing for *Dissostichus* spp. in Statistical Subareas 48.5, 88.2 north of 65°S and 88.3, and Divisions 58.4.1, 58.5.1 and 58.5.1 and 58.5.2 east of 79°20′E is prohibited from 1 December 2002 to 30 November 2003.

[1] Except for waters adjacent to the Kerguelen Islands.

Conservation Measure 32–10 (2002) [F16/XXI]

Prohibition of Directed Fishing for Dissostichus spp. in Statistical Division 58.4.4 Outside Areas of National Jurisdiction

Taking of *Dissostichus* spp., other than for scientific research purposes in accordance with Conservation Measure 24–01 [64/XXI], is prohibited in Statistical Division 58.4.4 from 1 December 2002. This prohibition shall apply until at least such time that a survey of the *Dissostichus* spp. stock in this division is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 32–11 (2002) [1,2] [F17/XXI]

Prohibition of Directed Fishing for Dissostichus Eleginoides in Statistical Subarea 58.6

Taking of *Dissostichus eleginoides,* other than for scientific research purposes in accordance with Conservation Measure 24–01 [64/XXI], is prohibited in Statistical Subarea 58.6 from 1 December 2002. This prohibition shall apply until at least such time that a survey of the *Dissostichus eleginoides* stock in this subarea is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

[1] Except for waters adjacent to the Prince Edward Islands.

[2] Except for waters adjacent to the Crozet Islands.

Conservation Measure 33–02 (2002) [F04/XXI]

Limitation of By-Catch in Statistical Division 58.5.2 in the 2002/03 Season

1. There shall be no directed fishing for any species other than *Dissostichus eleginoides* and *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2002/03 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 2002/03 season, the by-catch of *Channichthys rhinoceratus* shall not exceed 150 tonnes, the by-catch of *Lepidonotothen squamifrons* shall not exceed 80 tonnes, the by-catch of *Macrourus* spp. *shall not exceed 465 tonnes and the by-catch of skates and rays shall not exceed 120 tonnes.* For the purposes of this measure, ''*Macrourus* spp.'' and ''skates and rays'' should each be counted as a single species.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tonnes in Statistical Division 58.5.2.

4. If, in the course of a directed fishery, the by-catch in any one haul of *Channichthys rhinoceratus, Lepidonotothen squamifrons, Macrourus* spp. or skates and rays is equal to, or greater than 2 tonnes, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 2 tonnes for a period of at least five days.[2] The location where the by-catch exceeded 2 tonnes is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

5. If, in the course of a directed fishery, the by-catch in any one haul of any other by-catch species for which by-catch limitations apply under this conservation measure is equal to, or greater than 1 tonne, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 1 tonne for a period of at least five days.[2] The location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The Specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01 [51/XIX], pending the adoption of a more appropriate period by the Commission.

Conservation Measure 33–03 (2002) [1] [F11/XXI]

Limitation of By-Catch in New and Exploratory Fisheries in the 2002/03 Season

1. This conservation measure applies to new and exploratory fisheries in all areas containing small-scale research units (SSRUs) in the 2002/03 season except where specific by-catch conservation measures apply.

2. The catch limits for all by-catch species are set out in Annex 33–03/A [F11/A].

3. For the purposes of this measure ''*Macrourus* spp.'' and ''skates and rays'' should each be counted as a single species.

4. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles [2] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[3] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01 [51/XIX], pending the adoption of a more appropriate period by the Commission.

Annex 33–03/A [F11/A]

BY-CATCH CATCH LIMITS FOR NEW AND EXPLORATORY FISHERIES IN THE 2002/03 SEASON

Subarea/ Division	Region	SSRU	*Dissostichus* spp. catch limit (tonnes)	By-catch catch limit (tonnes)		
				Skates and rays	*Macrourus* spp.	Other species
48.6	North of 60°S	A	455	50	73	20
	South of 60°S	all	455	50	73	
		B	*	*	*	20
		C	*	*	*	20
		D	*	*	*	20
		E	*	*	*	20
		F	*	*	*	20
58.4.2		A	100	50	50	20
		B	100	50	50	20
		C	100	50	50	20
		D	100	50	50	20
		E	100	50	50	20
58.4.3a	Total area	.....	250	50	50	20
58.4.3b	Total area	.....	300	50	50	20
88.1	North of 65°S	A	256	50	50	20
	South of 65°S	B	876	50	140	20
		C	876	50	140	20
		D	876	50	140	20
		E	876	50	140	20
88.2		all	375	50	60	
		A	*	*	*	20
		B	*	*	*	20
		C	*	*	*	20
		D	*	*	*	20
		E	*	*	*	20
		F	*	*	*	20
		G	*	*	*	20

*In the case where a SSRU catch limit is not specified, the by-catch limit will be governed by the limit in the subarea/division.

Rules for catch limits for by-catch species:
Skates and rays—5% of the catch limit for *Dissostichus* spp. or 50 tonnes, whichever is greater.
Macrourus spp.—16% of the catch limit for *Dissostichus* spp. or 50 tonnes, whichever is greater.
Other species—20 tonnes per SSRU.

Conservation Measure 41–01 (2002) [1, 2]

General Measures for Exploratory Fisheries for Dissostichus Spp. in the Convention Area in the 2002/03 Season

The Commission,

Noting the need for the distribution of fishing effort and catch in fine-scale rectangles [3] in these exploratory fisheries,

hereby adopts the following conservation measure:

1. This conservation measure applies to exploratory fisheries using the trawl or longline methods except for such fisheries where the Commission has given specific exemptions to the extent of those exemptions. In trawl fisheries, a haul comprises a single deployment of the trawl net. In longline fisheries, a haul comprises the setting of one or more lines in a single location.

2. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any fine-scale rectangle shall cease when the reported catch reaches 100 tonnes and that rectangle shall be closed to fishing for the remainder of the season. Fishing in any fine-scale rectangle shall be restricted to one vessel at any one time.

3. Each haul of a longline, including those designated as research hauls in accordance with Annex 41–01/B [F10/B] paragraph 4, shall have, except in exceptional circumstances beyond the control of the vessel (such as ice and weather conditions), a soak time not exceeding 48 hours, measured from the completion of the setting process to the beginning of the hauling process.

4. In order to give effect to paragraph 2 above:

(i) The precise geographic position of a haul in trawl fisheries will be determined by the mid-point of the path between the start-point and end-point of the haul;

(ii) The precise geographic position of a haul in longline fisheries will be determined by the centre-point of the line or lines deployed;

(iii) The fine-scale rectangle in which a vessel is deemed to be fishing will be that in which the precise geographic position of a haul lies;

(iv) The vessel will be deemed to be fishing in any fine-scale rectangle from the beginning of the setting process until the completion of the hauling of all lines in that fine-scale rectangle;

(v) Catch and effort information for each species by fine-scale rectangle shall be reported to the Executive Secretary every five days using the Five-Day Catch and Effort Reporting System set out in Conservation Measure 23–01 [51/XIX]; and

(vi) The Secretariat shall notify Contracting Parties participating in these fisheries when the total catch for *Dissostichus eleginoides* and *Dissostichus mawsoni* combined in any fine-scale rectangle is likely to reach 100 tonnes, and fishing in that fine-scale rectangle shall be closed when that limit is reached.

5. The by-catch in each exploratory fishery shall be regulated as in Conservation Measure 33–03 [F11/XXI].

6. The total number and weight of *Dissostichus eleginoides* and *Dissostichus mawsoni* discarded, including those with the ''jellymeat'' condition, shall be reported.

7. Each vessel participating in the exploratory fisheries for *Dissostichus* spp. during the 2002/03 season shall have one scientific observer appointed

in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing season.

8. The Data Collection Plan (Annex 41–01/A [F10/A]) and Research Plan (Annex 41–01/B [F10/B]) shall be implemented. Data collected pursuant to the Data Collection and Research Plans for the period up to 31 August 2003 shall be reported to CCAMLR by 30 September 2003 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2003. Such data taken after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for the consideration of WG–FSA.

9. Members who choose not to participate in the fishery prior to the commencement of the fishery shall inform the Secretariat of changes in their plans no later than one month before the start of the fishery. If, for whatever reason, Members are unable to participate in the fishery, they shall inform the Secretariat no later than one week after finding that they cannot participate. The Secretariat will inform all Contracting Parties immediately after such notification is received.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] A fine-scale rectangle is defined as an area of 0.5° latitude by 1° longitude with respect to the northwest corner of the statistical subarea or division. The identification of each rectangle is by the latitude of its northernmost boundary and the longitude of the boundary closest to 0°.

Annex 41–01/A [F10/A]

Data Collection Plan for Exploratory Fisheries

1. All vessels will comply with the Five-day Catch and Effort Reporting System (Conservation Measure 23–01 [51/XIX]) and Monthly Fine-scale Catch, Effort and Biological Data Reporting Systems (Conservation Measures 23–04 and 23–05 [122/XIX and 121/XIX]).

2. All data required by the CCAMLR Scientific Observers Manual for finfish fisheries will be collected. These include:

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by-haul catch and catch per effort by species;

(iii) Haul-by-haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) Number and mass by species of by-catch of fish and other organisms; and

(viii) Observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) Position and sea depth at each end of every line in a haul;

(ii) Setting, soak, and hauling times;

(iii) Number and species of fish lost at surface;

(iv) Number of hooks set;

(v) Bait type;

(vi) Baiting success (%);

(vii) Hook type; and

(viii) Sea and cloud conditions and phase of the moon at the time of setting the lines.

Annex 41–01/B [F10/B]

Research Plan for Exploratory Fisheries

1. Activities under this research plan shall not be exempted from any conservation measure in force.

2. This plan applies to all small-scale research units (SSRUs) as defined in Table 1.

3. Any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities:

(i) On first entry into a SSRU, the first 10 hauls, designated ''first series'', whether by trawl or longline, should be designated ''research hauls'' and must satisfy the criteria set out in paragraph 4.

(ii) The next 10 hauls, or 10 tonnes of catch for longlining, whichever trigger level is achieved first, or 10 tonnes of catch for trawling, are designated the ''second series''. Hauls in the second series can, at the discretion of the master, be fished as part of normal exploratory fishing. However, provided they satisfy the requirements of paragraph 4, these hauls can also be designated as research hauls.

(iii) On completion of the first and second series of hauls, if the master wishes to continue to fish within the SSRU, the vessel must undertake a ''third series'' which will result in a total of 20 research hauls being made in all three series. The third series of hauls shall be completed during the same visit as the first and second series in a SSRU.

(iv) On completion of 20 research hauls the vessel may continue to fish within the SSRU.

(v) When either the catch limit or the end of the fishing season is reached, all fishing within the designated area should cease.

4. To be designated as a research haul:

(i) Each research haul must be separated by not less than 5 n miles from any other research haul, distance to be measured from the geographical mid-point of each research haul;

(ii) Each haul shall comprise: For longlines, at least 3 500 hooks and no more than 10 000 hooks; this may comprise a number of separate lines set in the same location; for trawls, at least 30 minutes effective fishing time as defined in the Draft Manual for Bottom Trawl Surveys in the Convention Area (SC–CAMLR–XI, Annex 5, Appendix H, Attachment E, paragraph 4); and

(iii) Each haul of a longline shall have a soak time of not less than six hours, measured from the time of completion of the setting process to the beginning of the hauling process.

5. All data specified in the Data Collection Plan (Annex 41–01/A [F10/A]) of this conservation measure shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and at least 30 fish sampled for biological studies (paragraphs 2(iv) to 2(vi) of Annex 41–01/A [F10/A]). Where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

TABLE 1.—THE COORDINATES OF THE SMALL-SCALE RESEARCH UNITS (SSRUS)

Subarea/ Division	SSRU	Grid coordinates			
		Top left latitude	Top left longitude	Bottom right latitude	Bottom right longitude
48.6	A	50°S	20°W	60°S	30°E
48.6	B	60°S	20°W	Coast	10°W
48.6	C	60°S	10°W	Coast	0
48.6	D	60°S	0	Coast	10°E

TABLE 1.—THE COORDINATES OF THE SMALL-SCALE RESEARCH UNITS (SSRUS)—Continued

Subarea/ Division	SSRU	Grid coordinates			
		Top left latitude	Top left longitude	Bottom right latitude	Bottom right longitude
48.6	E	60°S	10°E	Coast	20°E
48.6	F	60°S	20°E	Coast	30°E
58.4.1	A	55°S	80°E	64°S	89°E
58.4.2	A	62°S	30°E	Coast	40°E
58.4.2	B	62°S	40°E	Coast	50°E
58.4.2	C	62°S	50°E	Coast	60°E
58.4.2	D	62°S	60°E	Coast	70°E
58.4.2	E	62°S	70°E	Coast	80°E
58.4.3a	A	Whole division			
58.4.3b	A	Whole division			
58.4.4	A	51°S	40°E	54°S	42°E
58.4.4	B	51°S	42°E	54°S	46°E
58.4.4	C	51°S	46°E	54°S	50°E
58.4.4	D	Areas outside SSRUs A, B, C.			
58.6	A	45°S	40°E	48°S	44°E
58.6	B	45°S	44°E	48°S	48°E
58.6	C	45°S	48°E	48°S	51°E
58.6	D	45°S	51°E	48°S	54°E
58.7	A	45°S	37°E	48°S	40°E
88.1	A	60°S	150°E	65°S	170°W
88.1	B	65°S	150°E	72°S	180°
88.1	C	65°S	180°	72°S	170°W
88.1	D	72°S	160°E	84°S	180°
88.1	E	72°S	180°	84.5°S	170°W
88.2	A	60°S	170°W	Coast	160°W
88.2	B	60°S	160°W	Coast	150°W
88.2	C	60°S	150°W	Coast	140°W
88.2	D	60°S	140°W	Coast	130°W
88.2	E	60°S	130°W	Coast	120°W
88.2	F	60°S	120°W	Coast	110°W
88.2	G	60°S	110°W	Coast	105°W

Conservation Measure 41–02 (2002) [F05/XXI]

Limits on the Fishery for Dissostichus Eleginoides in Statistical Subarea 48.3 in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01 [7/V]:

Access

1. The fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 shall be conducted by vessels using longlines and pots only.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2002/03 season shall be limited to 7810 tonnes.

Season

3. For the purpose of the longline fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2002/03 season is defined as the period from 1 May to 31 August 2003, or until the catch limit is reached, whichever is sooner. For the purpose of the pot fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2002/03 season is defined as the period from 1 December 2002 to 30 November 2003, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch of crab shall be counted against the catch limit in the crab fishery in Statistical Subarea 48.3.

5. The by-catch of finfish in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2002/03 season shall not exceed 390 tonnes for skates and rays and 390 tonnes for *Macrourus* spp. For the purpose of these by-catch limits, skates and rays shall be counted as a single species.

6. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles [1] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days.[2] The location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation

7. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 [29/XXI] so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

9. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01 [51/XIX]; and

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04 [122/XIX]. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04 [51/XIX and 122/XIX], the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides.*

11. The total number and weight of *Dissostichus eleginoides* discarded, including those with the ''jellymeat'' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 23–05 [121/XIX], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01 [51/XIX], pending the adoption of a more appropriate period by the Commission.

Conservation Measure 41–04 (2002) [F12/XXI]

Limits on the Exploratory Fishery for Dissostichus Spp. in Statistical Subarea 48.6 in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02 [65/XXI]:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 48.6 shall be limited to the exploratory longline fishery by Japan, New Zealand and South Africa. The fishery shall be conducted by Japanese, New Zealand and South African flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 48.6 in the 2002/03 season shall not exceed a precautionary catch limit of 455 tonnes north of 60°S and 455 tonnes south of 60°S.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6, the 2002/03 season is defined as the period from 1 March to 31 August 2003 north of 60°S and the period from 15 February to 15 October 2003 south of 60°S. In the event that either limit is reached, the relevant fishery shall be closed.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03 [F11/XXI].

Mitigation

5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6 shall be carried out in accordance with the provisions of Conservation Measure 25–02 [29/XXI], except paragraph 3 (night setting) shall not apply south of 60°S. South of 60°S, prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 [216/XXI] and such data shall be reported to the Secretariat immediately.

6. South of 60°S, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02 [29/XXI].

7. There shall be no offal discharge in this fishery.

Observers

8. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

9. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01 [51/XIX]; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04 [122/XIX]. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04 [51/XIX and 122/XIX], the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

11. Fine-scale biological data, as required under Conservation Measure 23–05 [121/XIX], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan described in Conservation Measure 41–01 [F10/XXI], Annex B.

Conservation Measure 41–05 (2002) [F13/XXI]

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Division 58.4.2 in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02 [65/XXI]:

Access

1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.2 shall be limited to the exploratory longline fishery by Australia. The fishery shall be conducted by one Australian flagged vessel using longlines only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.2 in the 2002/03 season shall not exceed a precautionary catch limit of 500 tonnes, of which no more 100 tonnes shall be taken in any one of the five small-scale research units (SSRUs) bounded by longitudes 30°E to 40°E, 40°E to 50°E, 50°E to 60°E, 60°E to 70°E and 70°E to 80°E.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2, the 2002/03 season is defined as the period from 1 December 2002 to 30 November 2003.

Fishing Operations

4. The exploratory longline fishery for *Dissostichus* spp. in Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01 [F10/XXI], except paragraph 7.

In addition, fishing will be prohibited in depths less than 550 m in order to protect benthic communities. As a further protection for benthic habitats, either the eastern or western half (5° of longitude) of each SSRU in which fishing takes place can be defined as ''open'' at the discretion of the vessel's master. The other half of the SSRU shall remain closed to fishing.

By-Catch

5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03 [F11/XXI].

Mitigation

6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02 [29/XXI], except paragraph 3 (night setting) shall not apply. Prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 [216/XXI] and such data shall be reported to the Secretariat immediately.

7. In Statistical Division 58.4.2, longlines may be set during daylight hours only if the vessel demonstrates a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 24–02 [216/XXI]. Should a total of three (3) seabirds be caught, the vessel shall immediately revert to night setting in accordance with Conservation Measure 25–02 [29/XXI].

8. There shall be no offal discharge in this fishery.

Observers

9. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 41–01 [F10/XXI], Annex B.

Data: Catch/Effort

11. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01 [51/XIX]; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04 [122/XIX]. Fine-scale data shall be submitted on a haul-by-haul basis.

12. For the purpose of Conservation Measures 23–01 and 23–04 [51/XIX and 122/XIX], the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

13. Fine-scale biological data, as required under Conservation Measure 23–05 [121/XIX], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Conservation Measure 41–06 (2002) [F14/XXI]

Limits on the Exploratory Fishery for Dissostichus spp. on Elan Bank (Statistical Division 58.4.3a) Outside Areas of National Jurisdiction in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02 [65/XXI]

Access

1. Fishing for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction shall be limited to the exploratory longline fishery by Australia and Japan. The fishery shall be conducted by Australian and Japanese flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2002/03 season shall not exceed a precautionary catch limit of 250 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2002/03 season is defined as the period from 1 May to 31 August 2003, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03 [F11/XXI].

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 [29/XXI] so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01 [51/XIX]; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04 [122/XIX]. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 23–01 and 23–04 [51/XIX] and 122/XIX], the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 23–05 [121/XIX], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 41–01 [F10/XXI], Annex B.

Conservation Measure 41–07 (2002) [F15/XXI]

Limits on the Exploratory Fishery for Dissostichus Spp. on BANZARE Bank (Statistical Division 58.4.3b) Outside Areas of National Jurisdiction in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02 [65/XXI]:

Access

1. Fishing for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction shall be limited to the exploratory longline fishery by Australia and Japan. The fishery shall be conducted by Australian and Japanese flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus* spp. on BANZARE Bank (Statistical Division

58.4.3b) outside areas of national jurisdiction in the 2002/03 season shall not exceed a precautionary catch limit of 300 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2002/03 season is defined as the period from 1 May to 31 August 2003, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03 [F11/XXI].

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 [29/XXI] so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01 [51/XIX]; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04 [122/XIX]. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 23–01 and 23–04 [51/XIX and 122/XIX], the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 23–05 [121/XIX], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 41–01 [F10/XXI], Annex B.

Conservation Measure 41–08 (2002) [F06/XXI]

Limits on the Fishery for Dissostichus Eleginoides in Statistical Division 58.5.2 in the 2002/03 Season

Access

1. The fishery for Dissostichus eleginoides in Statistical Division 58.5.2 shall be conducted by vessels using trawls or longlines only.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Division 58.5.2 in the 2002/03 season shall be limited to 2 879 tonnes west of 79°20′E.

Season

3. For the purpose of the trawl fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2, the 2002/03 season is defined as the period from 1 December 2002 to 30 November 2003, or until the catch limit is reached, whichever is sooner. For the purpose of the longline fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2, the 2002/03 season is defined as the period from 1 May to 31 August 2003, or until the catch limit is reached, whichever is sooner.

By-Catch

4. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02 [F04/XXI].

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measures 25–02 and 25–03 [29/XXI and 173/XVIII] so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Annex 41–08/A [F06/A]; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Annex 41–08/A [F06/A]. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Annex 41–08/A [F06/A], the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides.*

9. The total number and weight of *Dissostichus eleginoides* discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

10. Fine-scale biological data, as required under Annex 41–08/A [F06/A], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Annex 41–08/A [F06/A]

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Dissostichus eleginoides* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below; and

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 41–09 (2002) [F18/XXI]

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 88.1 in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02 [65/XXI]:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be limited to the exploratory longline fishery by Japan, New Zealand, Russia, South Africa and Spain. The fishery shall be conducted by a maximum in the season of two (2) Japanese, six (6) New Zealand, two (2) Russian, two (2) South African and one (1) Spanish flagged vessels [1] using longlines only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.1 in the 2002/03 season shall not exceed a precautionary catch limit of 256 tonnes north of 65°S and 3 504 tonnes south of 65°S.

3. In order to ensure an adequate spread of fishing effort south of 65°S, no more than 876 tonnes of *Dissostichus* spp. shall be taken in each of the four small-scale research units (SSRUs) identified for Statistical Subarea 88.1 south of 65°S, as defined in Conservation Measure 41–01 [F10/XXI], Annex B.

Season

4. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1, the 2002/03 season is defined as the period from 1 December 2002 to 31 August 2003.

Fishing Operations

5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 41–01 [F10/XXI], except paragraph 7.

By-Catch

6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03 [F11/XXI].

Mitigation

7. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 25–02 [29/XXI], except paragraph 3 (night setting) shall not apply. Prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 [216/XXI] and such data shall be reported to the Secretariat immediately.

8. In Statistical Subarea 88.1, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 24–02 [216/XXI]. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02 [29/XXI].

9. There shall be no offal discharge in this fishery.

Observers

10. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS

11. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04 [148/XXI].

CDS

12. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 10–05 170/XXI].

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 41–01 [F10/XXI], Annex B.

Data: Catch/Effort

14. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01 [51/XIX]; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04 [122/XIX]. Fine-scale data shall be submitted on a haul-by-haul basis.

15. For the purpose of Conservation Measures 23–01 and 23–04 [51/XIX and 122/XIX], the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

16. Fine-scale biological data, as required under Conservation Measure 23–05 [121/XIX], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Discharge

17. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) Oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) Garbage;

(iii) Food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) Poultry or parts (including egg shells); or

(v) Sewage within 12 n miles of land or ice shelves, or sewage while the ship is travelling at a speed of less than 4 knots.

Additional Elements

18. No live poultry or other living birds shall be brought into Statistical Subarea 88.1 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.1.

19. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be prohibited within 10 n miles of the coast of the Balleny Islands.

[1] As notified to the Secretariat in accordance with Conservation Measure 21–02 [65/XXI] paragraph 2(iv).

Conservation Measure 41–10 (2002) [F19/XXI]

Limits on the Exploratory Fishery for Dissostichus Spp. in Statistical Subarea 88.2 in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02 [65/XXI]:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.2 shall be limited to the exploratory longline fishery by Japan, New Zealand and Russia. The fishery shall be conducted by a maximum in the season of two (2) Japanese, five (5) New Zealand and two (2) Russian flagged vessels [1] using longlines only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.2 south of 65°S in the 2002/03 season shall not exceed a precautionary catch limit of 375 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2, the 2002/03 season is defined as the period from 1 December 2002 to 31 August 2003.

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01 [F10/XXI], except paragraph 7.

By-Catch

5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03 [F11/XXI].

Mitigation

6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02 [29/XXI], except paragraph 3 (night setting) shall not apply. Prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 [216/XXI], and such data shall be reported to the Secretariat immediately.

7. In Statistical Subarea 88.2, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 24–02 [216/XXI]. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02 [29/XXI].

8. There shall be no offal discharge in this fishery.

Observers

9. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS

10. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04 [148/XXI].

CDS

11. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 10–05 170/XXI].

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 41–01 [F10/XXI], Annex B.

Data: Catch/Effort

13. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01 [51/XIX]; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04 [122/XIX]. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 23–01 and 23–04 [51/XIX and 122/XIX], the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

15. Fine-scale biological data, as required under Conservation Measure 23–05 [121/XIX], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Discharge

16. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) Oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) Garbage;

(iii) Food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) Poultry or parts (including egg shells); or

(v) Sewage within 12 n miles of land or ice shelves, or sewage while the ship is travelling at a speed of less than 4 knots.

Additional Elements

17. No live poultry or other living birds shall be brought into Statistical Subarea 88.2 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.2.

[1] As notified to the Secretariat in accordance with Conservation Measure 21–02 [65/XXI] paragraph 2(iv).

Conservation Measure 42–01 (2002) [F02/XXI]

Limits on the Fishery for Champsocephalus Gunnari in Statistical Subarea 48.3 in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01 [7/V]:

Access

1. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall be conducted by vessels using trawls only. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

2. Fishing for *Champsocephalus gunnari* shall be prohibited within 12 n miles of the coast of South Georgia during the period 1 March to 31 May (spawning period).

Catch Limit

3. The total catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2002/03 season shall be limited to 2 181 tonnes. The total

catch of *Champsocephalus gunnari* taken in the period 1 March to 31 May shall be limited to 545 tonnes.

4. Where any haul contains more than 100 kg of *Champsocephalus gunnari,* and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10%, for a period of at least five days.[2] The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season

5. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3, the 2002/03 season is defined as the period from 1 December 2002 to 30 November 2003, or until the catch limit is reached, whichever is sooner.

By-Catch

6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–01 [95/XIV]. If, in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch in any one haul of any of the species named in Conservation Measure 33–01 [95/XIV].

- Is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- Is equal to or greater than 2 tonnes, then

the fishing vessel shall move to another location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 33–01 [95/XIV] exceeded 5% for a period of at least five days.[2] The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation

7. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 [173/XVIII] so as to minimise the incidental mortality of seabirds in the course of the fishery.

8. Should any vessel catch a total of 20 seabirds, it shall cease fishing and shall be excluded from further participation in the fishery in the 2002/03 season.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01 [51/XIX]; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04 [122/XIX]. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 23–01 and 23–04 [51/XIX and 122/XIX], the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 23–05 [121/XIX], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

13. Each vessel operating in this fishery during the period 1 March to 31 May 2003 shall conduct twenty (20) research trawls in the manner described in Annex 42–01/A [F02/A].

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01 [51/XIX], pending the adoption of a more appropriate period by the Commission.

Annex 42–01/A [F02/A]

Research Trawls During Spawning Season

1. All fishing vessels taking part in the fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 between 1 March and 31 May shall be required to conduct a minimum of 20 research hauls, to be completed during that period. Twelve research hauls shall be carried out in the Shag Rocks-Black Rocks area. These shall be distributed between four sectors: four each in the NW and SE sectors, and two each in the NE and SW sectors. A further eight research hauls shall be conducted on the northwestern shelf of South Georgia over water less than 300 m deep.

2. Each research haul must be at least 5 n miles distant from all others. The spacing of stations is intended to be such that both areas are adequately covered in order to provide information on the length, sex, maturity and weight composition of *Champsocephalus gunnari*.

3. If concentrations of fish are located en route to South Georgia, they should be fished in addition to the research hauls.

4. The duration of research hauls must be of a minimum of 30 minutes with the net at fishing depth. During the day, the net must be fished close to the bottom.

5. The catch of all research hauls shall be sampled by the international scientific observer on board. Samples should aim to comprise at least 100 fish, sampled using standard random sampling techniques. All fish in the sample should be at least examined for length, sex and maturity determination, and where possible weight. More fish should be examined if the catch is large and time permits.

Conservation Measure 42–02 (2002) [F03/XXI]

Limits on the Fishery for Champsocephalus Gunnari in Statistical Division 58.5.2 in the 2002/03 Season

Access

1. The fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only.

2. For the purpose of this fishery for *Champsocephalus gunnari*, the area open to the fishery is defined as that portion of Statistical Division 58.5.2 that lies within the area enclosed by a line:

(i) Starting at the point where the meridian of longitude 72°15′ E intersects the Australia-France Maritime Delimitation Agreement Boundary then south along the meridian to its intersection with the parallel of latitude 53°25′ S;

(ii) Then east along that parallel to its intersection with the meridian of longitude 74° E;

(iii) Then northeasterly along the geodesic to the intersection of the parallel of latitude 52°40′ S and the meridian of longitude 76° E;

(iv) Then north along the meridian to its intersection with the parallel of latitude 52° S;

(v) Then northwesterly along the geodesic to the intersection of the parallel of latitude 51° S with the meridian of longitude 74°30′ E; and

(vi) Then southwesterly along the geodesic to the point of commencement.

3. Areas in Statistical Division 58.5.2 outside that defined above shall be closed to directed fishing for *Champsocephalus gunnari*.

Catch Limit

4. The total catch of *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2002/03 season shall be limited to 2 980 tonnes.

5. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10% for a period of at least five days.[2] The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season

6. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2, the 2002/03 season is defined as the period from 1 December 2002 to 30 November 2003, or until the catch limit is reached, whichever is sooner.

By-Catch

7. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02 [F04/XXI].

Mitigation

8. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 [173/XVIII] so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Annex 42–02/B [F03/B]; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Annex 42–02/B [F03/B]. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Annex 42–02/B [F03/B], the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.

Data: Biological

12. Fine-scale biological data, as required under Annex 42–02/B [F03/B], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01 [51/XIX], pending the adoption of a more appropriate period by the Commission.

Annex 42–02/B [F03/B]

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Champsocephalus gunnari* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below; and

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 43–01 (2002) [F07/XXI]

Precautionary Catch Limit for Electrona Carlsbergi in Statistical Subarea 48.3 in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01 [7/V]:

1. For the purposes of this conservation measure the fishing season for *Electrona carlsbergi* is defined as the

period from 1 December 2002 to 30 November 2003.

2. The total catch of *Electrona carlsbergi* in the 2002/03 season shall be limited to 109 000 tonnes in Statistical Subarea 48.3.

3. In addition, the total catch of *Electrona carlsbergi* in the 2002/03 season shall be limited to 14 500 tonnes in the Shag Rocks region, defined as the area bounded by 52°30′S, 40°W; 52°30′S, 44°W; 54°30′S, 40°W and 54°30′S, 44°W.

4. In the event that the catch of *Electrona carlsbergi* is expected to exceed 20 000 tonnes in the 2002/03 season, a survey of stock biomass and age structure shall be conducted during that season by the principal fishing nations involved. A full report of this survey including data on stock biomass (specifically including area surveyed, survey design and density estimates), age structure and the biological characteristics of the by-catch shall be made available in advance for discussion at the meeting of the Working Group on Fish Stock Assessment in 2003.

5. The directed fishery for *Electrona carlsbergi* in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in Conservation Measure 33–01 95/XIV] reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 109 000 tonnes, whichever is sooner.

6. The directed fishery for *Electrona carlsbergi* in the Shag Rocks region shall close if the by-catch of any of the species named in Conservation Measure 33–01 [95/XIV] reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 14 500 tonnes, whichever is sooner.

7. If, in the course of the directed fishery for *Electrona carlsbergi*, the by-catch in any one haul of any species other than the target species

- Is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- Is equal to or greater than 2 tonnes, then

the fishing vessel shall move to another fishing location at least 5 n miles distant [1]. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species, other than the target species, exceeded 5%, for a period of at least five days [2]. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

8. For the purpose of implementing this conservation measure:

(i) The Catch Reporting System set out in Conservation Measure 23–03 [40/X] shall apply in the 2002/03 season;

(ii) The Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 23–04 [122/XIX] shall also apply in the 2002/03 season. For the purposes of Conservation Measure 23–04 [122/XIX], the target species is *Electrona carlsbergi*, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi*; and

(iii) The Monthly Fine-scale Biological Data Reporting System set out in Conservation Measure 23–05 [121/XIX] shall also apply in the 2002/03 season. For the purposes of Conservation Measure 23–05 [121/XIX], the target species is *Electrona carlsbergi*, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi*. For the purposes of paragraph 3(ii) of Conservation Measure 23–05 [121/XIX] a representative sample shall be a minimum of 500 fish.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01 [51/XIX], pending the adoption of a more appropriate period by the Commission.

Conservation Measure 51–01 (2002) [32/XXI]

Precautionary Catch Limitations on Euphausia Superba in Statistical Area 48

Catch Limit

1. The total catch of *Euphausia superba* in Statistical Area 48 shall be limited to 4.0 million tonnes in any fishing season.

2. The total catch shall be further subdivided into statistical subareas as follows:

Subarea 48.1—1.008 million tonnes;

Subarea 48.2—1.104 million tonnes;

Subarea 48.3—1.056 million tonnes; and

Subarea 48.4—0.832 million tonnes.

3. Precautionary catch limits to be agreed by the Commission on the basis of advice of the Scientific Committee shall be applied to smaller management units, or on such other basis as the Scientific Committee may advise, if the total catch in Statistical Area 48 in any fishing season exceeds 620 000 tonnes.

4. This measure shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

Season

5. A fishing season begins on 1 December and finishes on 30 November of the following year.

Data

6. For the purpose of implementing this conservation measure, the data requirements set out in Conservation Measure 23–06 [F21/XXI] shall apply.

Conservation Measure 51–02 (2002) [106/XXI]

Precautionary Catch Limitation on Euphausia Superba in Statistical Division 58.4.1

Catch Limit

1. The total catch of *Euphausia superba* in Statistical Division 58.4.1 shall be limited to 440 000 tonnes in any fishing season.

2. The total catch shall be further subdivided into two subdivisions within Statistical Division 58.4.1 as follows: west of 115°E, 277 000 tonnes; and east of 115°E, 163 000 tonnes.

3. This measure shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

Season

4. A fishing season begins on 1 December and finishes on 30 November the following year.

Data

5. For the purposes of implementing this conservation measure, the data requirements set out in Conservation Measure 23–06 [F21/XXI] shall apply.

Conservation Measure 51–03 (2002) [45/XXI]

Precautionary Catch Limitation on Euphausia Superba in Statistical Division 58.4.2

Catch Limit

1. The total catch of *Euphausia superba* in Statistical Division 58.4.2 shall be limited to 450 000 tonnes in any fishing season. This limit shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

Season

2. A fishing season begins on 1 December and finishes on 30 November of the following year.

Data

3. For the purposes of implementing this conservation measure, the data

requirements set out in Conservation Measure 23–06 [F21/XXI] shall apply.

Conservation Measure 52–01 (2002) [F08/XXI]

Limits on the Fishery for Crab in Statistical Subarea 48.3 in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01 [7/V]:

Access

1. The fishery for crab in Statistical Subarea 48.3 shall be conducted by vessels using pots only. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. The crab fishery shall be limited to one vessel per Member.

3. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorised to participate in the crab fishery.

Catch Limit

4. The total catch of crab in Statistical Subarea 48.3 in the 2002/03 season shall not exceed a precautionary catch limit of 1 600 tonnes.

5. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *Paralomis formosa,* males with a minimum carapace width of 94 mm and 90 mm, respectively, may be retained in the catch.

Season

6. For the purpose of the pot fishery for crab in Statistical Subarea 48.3, the 2002/03 season is defined as the period from 1 December 2002 to 30 November 2003, or until the catch limit is reached, whichever is sooner.

By-Catch

7. The by-catch of *Dissostichus eleginoides* shall be counted against the catch limit in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3.

Observers

8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period. Scientific observers shall be afforded unrestricted access to the catch for statistical random sampling prior to, as well as after, sorting by the crew.

Data: Catch/Effort

9. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02 [61/XII]; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04 [122/XIX]. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–02 and 23–04 [61/XII and 122/XIX] the target species is crab and by-catch species are defined as any species other than crab.

Data: Biological

11. Fine-scale biological data, as required under Conservation Measure 23–05 [121/XIX], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the data requirements described in Annex 52–01/A [F08/A] and the experimental harvest regime described in Conservation Measure 52–02 [F09/XXI]. Data collected for the period up to 31 August 2003 shall be reported to CCAMLR by 30 September 2003 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2003. Such data collected after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 52–01/A [F08/A]

Data Requirements on the Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data: Cruise Descriptions: cruise code, vessel code, permit number, year.

Pot Descriptions: diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions: date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions: retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

TABLE 1.—DATA REQUIREMENTS FOR BY-CATCH SPECIES IN THE CRAB FISHERY IN STATISTICAL SUBAREA 48.3

Species	Data requirements
Dissostichus eleginoides.	Numbers and estimated total weight.
Notothenia rossii	Numbers and estimated total weight.
Other species	Estimated total weight.

Biological Data: For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions: cruise code, vessel code, permit number.

Sample Descriptions: date, position at start of the set, compass bearing of the set, line number.

Data: species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 52–02 (2002) [F09/XXI]

Experimental Harvest Regime for the Crab Fishery in Statistical Subarea 48.3 in the 2002/03 Season

The following measures apply to all crab fishing within Statistical Subarea 48.3 in the 2002/03 fishing season. Every vessel participating in the crab fishery in Statistical Subarea 48.3 shall conduct fishing operations in accordance with an experimental harvest regime as outlined below:

1. Vessels shall conduct the experimental harvest regime in the 2002/03 season at the start of their first season of participation in the crab fishery and the following conditions shall apply:

(i) Every vessel when undertaking an experimental harvesting regime shall expend its first 200,000 pot hours of effort within a total area delineated by twelve blocks of 0.5° latitude by 1.0° longitude. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying that number by the soak

time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling;

(ii) Vessels shall not fish outside the area delineated by the 0.5° latitude by 1.0° longitude blocks prior to completing the experimental harvesting regime;

(iii) Vessels shall not expend more than 30,000 pot hours in any single block of 0.5° latitude by 1.0° longitude;

(iv) If a vessel returns to port before it has expended 200,000 pot hours in the experimental harvesting regime the remaining pot hours shall be expended before it can be considered that the vessel has completed the experimental harvesting regime; and

(v) After completing 200,000 pot hours of experimental fishing, it shall be considered that vessels have completed the experimental harvesting regime and they shall be permitted to commence fishing in a normal fashion.

2. Data collected during the experimental harvest regime up to 30 June 2003 shall be submitted to CCAMLR by 31 August 2003.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 52–01 [F08/XXI].

4. For the purposes of implementing normal fishing operations after completion of the experimental harvest regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02 [61/XII] shall apply.

5. Vessels that complete experimental harvest regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 52–01 [F08/XXI].

6. Fishing vessels shall participate in the experimental harvest regime independently (*i.e.* vessels may not cooperate to complete phases of the experiment).

7. Crabs taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

8. All vessels participating in the experimental harvest regime shall carry at least one scientific observer on board during all fishing activities.

Conservation Measure 61–01 (2002) [F20/XXI]

Limits on the Exploratory Fishery for Martialia Hyadesi in Statistical Subarea 48.3 in the 2002/03 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measures 21–02 and 31–01 [65/XXI and 7/V]:

Access

1. Fishing for *Martialia hyadesi* in Statistical Subarea 48.3 shall be limited to the exploratory jig fishery by notifying countries. The fishery shall be conducted by vessels using jigs only.

Catch Limit

2. The total catch of *Martialia hyadesi* in Statistical Subarea 48.3 in the 2002/03 season shall not exceed a precautionary catch limit of 2,500 tonnes.

Season

3. For the purpose of the exploratory jig fishery for *Martialia hyadesi* in Statistical Subarea 48.3, the 2002/03 season is defined as the period from 1 December 2002 to 30 November 2003, or until the catch limit is reached, whichever is sooner.

Observers

4. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

5. For the purpose of implementing this conservation measure in the 2002/03 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02 [61/XII]; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04 [122/XIX]. Fine-scale data shall be submitted on a haul-by-haul basis.

6. For the purpose of Conservation Measures 23–02 and 23–04 [61/XII and 122/XIX], the target species is *Martialia hyadesi* and by-catch species are defined as any species other than *Martialia hyadesi.*

Data: biological

7. Fine-scale biological data, as required under Conservation Measure 23–05 [121/XIX], shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

8. Each vessel participating in this exploratory fishery shall collect data in accordance with the Data Collection Plan described in Annex 61–01/A [F20/A]. Data collected pursuant to the plan for the period up to 31 August 2003 shall be reported to CCAMLR by 30 September 2003 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2003.

Annex 61–01/A [F20/A]

Data Collection Plan for Exploratory Squid (*Martialia Hyadesi*) Fisheries in Statistical Subarea 48.3

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the data form (Form TAC) for the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 23–02 [61/XII]; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR Scientific Observers Manual for squid fisheries will be collected. These include:

(i) Vessel and observer program details (Form S1);

(ii) Catch information (Form S2); and

(iii) Biological data (Form S3).

Resolution 18/XXI [RR/XXI]

Harvesting of Dissostichus Eleginoides in Areas Outside of Coastal State Jurisdiction Adjacent to the CCAMLR Area in FAO Statistical Areas 51 and 57

The Commission,

Affirming that CCAMLR was established to conserve the marine living resources of the Antarctic marine ecosystem,

Recognising that CCAMLR also has the attributes of a regional fisheries management organisation as considered under the auspices of the United Nations,

Recognising that CCAMLR is the primary body responsible for the conservation and rational use of *Dissostichus eleginoides* in areas not under national jurisdiction,

Noting Resolution 10/XII concerning the need to harmonise management measures within and adjacent to the CCAMLR Area taking into account Article 87 of UNCLOS and in recognition of the obligations to conserve the living resources of the high seas under Articles 117 to 119 of UNCLOS,

Noting the role of cooperation in scientific research through collecting and exchanging data,

Recognising that measures to manage harvesting of stocks of *Dissostichus*

eleginoides are needed in high seas of FAO Statistical Areas 51 and 57,

Recommends that Members provide data and other information, subject to their laws and regulations, relevant to understanding the biology and estimating the status of stocks in FAO Statistical Areas 51 and 57.

Recommends that Members take steps necessary to conduct only that level of harvesting of *Dissostichus eleginoides* in FAO Statistical Areas 51 and 57, which would ensure the conservation of this species in the Convention Area.

Resolution 19/XXI [R01/XXI]

*Flags of Non-Compliance**

The Commission,

Concerned that some Flag States, particularly certain non-Contracting Parties, do not comply with their obligations regarding jurisdiction and control according to international law in respect of fishing vessels entitled to fly their flag that carry out their activities in the Convention Area, and that as a result these vessels are not under the effective control of such Flag States,

Aware that the lack of effective control facilitates fishing by these vessels in the Convention Area in a manner that undermines the effectiveness of CCAMLR's conservation measures, leading to illegal, unreported and unregulated (IUU) catches of fish and unacceptable levels of incidental mortality of seabirds,

Considering therefore such fishing vessels to be flying Flags of Non-Compliance (FONC) in the context of CCAMLR (FONC vessels),

Noting that the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas emphasizes that the practice of flagging or reflagging fishing vessels as a means of avoiding compliance with international conservation and management measures for living marine resources and the failure of the States to fulfil their responsibilities with respect of fishing vessels entitled to fly their flag, are among the factors that seriously undermine the effectiveness of such measures,

Noting that the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing calls on States to take measures to discourage nationals subject to their jurisdiction from supporting and engaging in any activity that undermines the effectiveness of international conservation and management measures,

urges all Contracting Parties and non-Contracting Parties cooperating with CCAMLR to:

1. Without prejudice to the primacy of the responsibility of the Flag State, to take measures or otherwise cooperate to ensure, to the greatest extent possible, that the nationals subject to their jurisdiction do not support or engage in IUU fishing, including engagement on board FONC vessels in the CCAMLR Convention Area if this is consistent with their national law.

2. Ensure the full cooperation of their relevant national agencies and industries in implementing the measures adopted by CCAMLR.

3. Develop ways to ensure that the export or transfer of fishing vessels from their State to a FONC State is prohibited.

4. Prohibit the landings and transhipments of fish and fish products from FONC vessels.

*Many of the flags hereby called FONC are commonly referred to as ''flags of convenience''.

Margaret F. Hayes,

Director, Office of Oceans Affairs, Bureau of Oceans, International Environmental & Scientific Affairs, Department of State.

[FR Doc. 02–31851 Filed 12–18–02; 8:45 am]

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Federal Register

Thursday,
December 19, 2002

Part IV

The President

Proclamation 7635—Wright Brothers Day, 2002

Federal Register
Vol. 67, No. 244
Thursday, December 19, 2002

Presidential Documents

Title 3—

The President

Proclamation 7635 of December 16, 2002

Wright Brothers Day, 2002

By the President of the United States of America

Throughout our Nation's history, Americans have contributed to important technological breakthroughs that have improved the quality of life for countless individuals. On December 17, 1903, near Kitty Hawk, North Carolina, Orville and Wilbur Wright achieved the first successfully sustained and controlled flight with a heavier-than-air, engine-powered aircraft. In the 99 years since that revolutionary event, mankind has flown across oceans, broken the sound barrier, launched satellites, and landed on the moon. On Wright Brothers Day, we celebrate the vision and determination of these innovators whose remarkable achievements changed the world forever.

The first successful powered flight on the morning of December 17, 1903, lasted only 12 seconds and spanned approximately 120 feet; but the Wright brothers' ideas and design led to countless advances in aviation. Between 1899 and 1905, they constructed a total of seven aircraft, and through this extensive research and experimentation, Orville and Wilbur Wright established the foundation of modern aeronautics.

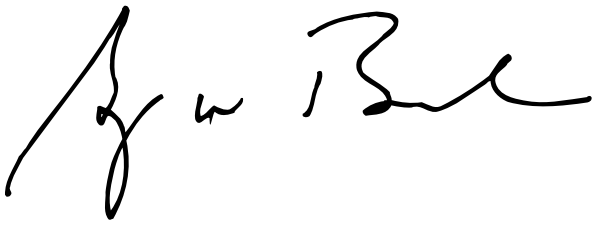
The airplane has played a critical role in improving our national defense, our economy, and our Nation. It has enabled trade to thrive, strengthened our economic security, and fostered friendship and goodwill throughout the world. Today, Americans rely on airplanes to deliver emergency treatment to the sick or injured, bring families together, and link us to every corner of the globe.

The United States remains committed to supporting progress in technology that secures air travel, enhances our national defense, and ensures the success and prosperity of our country. Inspired by the extraordinary accomplishments of the Wright brothers, our Nation will continue to explore new ideas, improve technology, and work for a brighter future for all.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 143) as amended, has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim December 17, 2002, as Wright Brothers Day. Through their courage and willingness to take risks, the Wright brothers reflect the true American character.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2099/P.L. 107–342
To amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve. (Dec. 17, 2002; 116 Stat. 2891)

H.R. 2109/P.L. 107–343
To authorize the Secretary of the Interior to conduct a special resource study of Virginia Key Beach Park in Biscayne Bay, Florida, for possible inclusion in the National Park System. (Dec. 17, 2002; 116 Stat. 2892)

H.R. 2115/P.L. 107–344
To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within and outside of the service area of the Lakehaven Utility District, Washington. (Dec. 17, 2002; 116 Stat. 2893)

H.R. 2187/P.L. 107–345
To amend title 10, United States Code, to make receipts collected from mineral leasing activities on certain naval oil shale reserves available to cover environmental restoration, waste management, and environmental compliance costs incurred by the United States with respect to the reserves. (Dec. 17, 2002; 116 Stat. 2894)

H.R. 2385/P.L. 107–346
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To provide for the conveyance of certain public land in Clark County, Nevada, for use as a shooting range. (Dec. 17, 2002; 116 Stat. 2975)

H.R. 2990/P.L. 107–351

Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2002 (Dec. 17, 2002; 116 Stat. 2978)

H.R. 3180/P.L. 107–352

To consent to certain amendments to the New Hampshire-Vermont Interstate School Compact. (Dec. 17, 2002; 116 Stat. 2981)

H.R. 3401/P.L. 107–353

California Five Mile Regional Learning Center Transfer Act (Dec. 17, 2002; 116 Stat. 2982)

H.R. 3449/P.L. 107–354

To revise the boundaries of the George Washington Birthplace National Monument, and for other purposes. (Dec. 17, 2002; 116 Stat. 2984)

H.R. 3609/P.L. 107–355

Pipeline Safety Improvement Act of 2002 (Dec. 17, 2002; 116 Stat. 2985)

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H.R. 4692/P.L. 107–357

To amend the Act entitled ''An Act to authorize the Establishment of the Andersonville National Historic Site in the State of Georgia, and for other purposes'', to provide for the addition of certain donated lands to the Andersonville National Historic Site. (Dec. 17, 2002; 116 Stat. 3014)

H.R. 4823/P.L. 107–358

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H.R. 5125/P.L. 107–359

Civil War Battlefield Preservation Act of 2002 (Dec. 17, 2002; 116 Stat. 3016)

H.R. 5738/P.L. 107–360

To amend the Public Health Service Act with respect to special diabetes programs for Type I diabetes and Indians. (Dec. 17, 2002; 116 Stat. 3019)

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